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TO PRESERVE THE AUTHORITY OF THE FEDERAL BANKING SUPERVISORY AGENCIES TO ARRANGE INTERSTATE ACQUISITIONS AND MERGERS FOR FAILED AND FAILING BANKS

ORIGINAL

HEARINGS

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE

OF THE

COMMITTEE ON
BANKING, FINANCE AND URBAN AFFAIRS
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

SECOND SESSION

COMPLETED

618

ON

H.R. 4701

A BILL TO PRESERVE THE AUTHORITY OF THE FEDERAL BANKING SUPERVISORY AGENCIES TO ARRANGE INTERSTATE ACQUISITIONS AND MERGERS FOR FAILED AND FAILING BANKS, AND FOR OTHER PURPOSES

MAY 1, 6, 7, AND 8, 1986

Serial No. 99–72

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TO PRESERVE THE AUTHORITY OF THE FEDERAL BANKING SUPERVISORY AGENCIES TO ARRANGE INTERSTATE ACQUISITIONS AND MERGERS FOR FAILED AND FAILING BANKS

THURSDAY, MAY 1, 1986

House of Representatives,
Subcommittee on Financial Institutions,
Supervision, Regulation and Insurance,
Committee on Bnaking, Finance and Urban Affairs,
Washington, DC.

The subcommittee met at 10:05 a.m. in room 2128, Rayburn House Office Building; Hon. Fernand J. St Germain (chairman of the subcommittee) presiding

Present: Chairman St Germain, Representatives Barnard, LaFalce, Vento, Frank, Cooper, Kaptur, Kanjorski, Wylie, Wortley, Dreier, Roukema, Bereuter, Bartlett, and Roth.

Also present: Representative Carper of the full committee.

Chairman St Germain. The subcommittee will come to order.

This morning we open hearings on H.R. 4701, a bank rescue package, introduced at the request of the Federal bank supervisory agencies.

This is the first of a series of hearings on legislation developed by the administration and the Federal agencies to facilitate emergency interstate acquisitions, provide additional resources for the FSLIC and enhance the Federal Home Loan Bank Board supervisory powers.

The focus of today's hearings on H.R. 4701 would liberalize the emergency provisions of Garn-St Germain. It would give Federal regulators increased powers to determine when, where, and how banks can merge, acquire and branch across the Nation, combined with the interstate activity already being carried out under regional compacts and the existing provisions of Garn-St Germain.

This newest proposal, if enacted, would go a long way toward ending the debate over the merits of interstate banking.

Now in considering this emergency banking bill, let us not forget that there is other banking legislation that is long, long overdue, and on which this committee has taken action.

For instance, H.R. 20, which closed the nonbank bank loophole remains in the Rules Committee, where it has resided or languished for almost 11 months. Now it is an essential piece of legislation, unless we intend to simply disband all pretense of appropriate bank supervision and regulation.

This is not the only area of delay. The American consumer has been waiting and waiting and waiting for the Congress to insist that banks let consumers have access to deposits in a timely fashion. H.R. 2443, which would end the check hold game, was passed by the House on January 23. It sits in the Senate, apparently unnoticed.

Maybe the regulators, who have shown such remarkable energy in drafting and pushing this bank assistance plan, how fast they can act when it is for the banks, can devote a little of their energy in support of these other measures, which have been awaiting action. Maybe the regulators don't regard it as an emergency; however, for the wage earner whose pay check is stopped for 2 weeks by some bank's hold policy, it is a genuine emergency, as is the necessity to close the nonbank bank loophole.

[The text of H.R. 4701 follows:]

I

99TH CONGRESS
2D SESSION

H. R. 4701

To preserve the authority of the Federal banking supervisory agencies to arrange interstate acquisitions and mergers for failed and failing banks, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 1986

Mr. ST GERMAIN (for himself and Mr. WYLIE) (by request) introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

---

A BILL

To preserve the authority of the Federal banking supervisory agencies to arrange interstate acquisitions and mergers for failed and failing banks, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Financial Institutions Emergency Acquisitions Amendments of 1986".

ASSISTED EXTRAORDINARY ACQUISITIONS

SEC. 2. Section 13(f) of the Federal Deposit Insurance Act (12 U.S.C. 1823(f)) is amended—

(1) by amending paragraph (1) to read as follows:

"(1)(A) Whenever the appropriate Federal banking agency is informed that an out-of-State bank or holding company is considering acquiring, directly or indirectly, an insured bank with total assets of $250,000,000 or more that is in danger of closing, such agency shall (A) notify the Corporation of such, (B) consult with the Corporation before taking any action with respect to any such acquisition, and (C) provide the Corporation with notice of any final action taken.

"(B) Except as provided in paragraph (9), the provisions of this subsection shall be used exclusively in connection with any acquisition by or merger with an out-of-State bank or holding company with respect to which the Corporation provides assistance under its powers in subsection (c) and shall not be applicable if the Corporation does not provide such assistance. Nothing contained in this subsection shall be construed to limit the Corporation's powers in subsection (c) to assist a transaction.".

(2) by striking out "$500,000,000" in subparagraph (2)(A) and inserting in lieu thereof "$250,000,000".

(3) by amending subparagraph (3) to read as follows:

"(3)(A)(i) Whenever the appropriate Federal or State chartering authority has certified in writing that an insured bank with total assets of $250,000,000 or more (as determined from its most recent report of condition) is in danger of closing, the insured bank may merge with or its assets may be purchased by and its liabilities assumed by another depository institution, including an insured depository institution located in the State where the insured bank is chartered but established by an out-of-State bank or holding company, or its shares may be acquired by an out-of-State bank or holding company.

"(ii) Whenever the appropriate Federal or State chartering authority has certified in writing that one or more insured bank subsidiaries of a holding company are in danger of closing and such bank or banks hold aggregate assets equal to $250,000,000 or more (as determined from their most recent reports of condition) and such bank or banks represent 33 per centum or more of the total assets of all insured bank subsidiaries (as determined from their most recent reports of condition) of such holding company, an out-of-State bank or holding company may (a) purchase the shares of or otherwise acquire the holding company that controls such bank or banks and all of such holding company's subsidiary banks or (b) purchase the shares or otherwise acquire any such bank or banks in danger of closing and/or establish one or more newly chartered banks located in the State where such banks in danger of closing are chartered for the purpose of merging with or purchasing the assets and assuming the liabilities of such banks, provided the aggregate total assets of such banks that are acquired equal $250,000,000 or more. Any out-of-State bank or holding company which, pursuant to clause (b), purchases shares of, or establishes a newly chartered bank for the purpose of merging with or acquiring the assets and assuming the liabilities of, such bank or banks in danger of closing may purchase the shares of or otherwise acquire any bank which is affiliated with such bank or banks.

"(iii) The Corporation may assist a merger or acquisition permitted under subparagraph (A) only where the board of directors or trustees of the insured bank has requested in writing that the Corporation assist a merger or a purchase.

"(B)(i) Whenever the Corporation provides assistance, directly or indirectly, under the authority of subsection (c), to an insured bank and such bank was eligible at the time such assistance was given to be acquired by an out-of-State bank or holding company, pursuant to subparagraph (A), the bank shall remain eligible to be acquired, to the same extent that it was eligible when assistance was granted, by an out-of-State bank or holding company so long as the Corporation's assistance remains outstanding. If, at the time such assistance was granted to an insured bank or to affiliated insured banks, such bank's or banks' parent holding company or other affiliated banks were eligible also to be acquired by an out-of-State bank or holding company, pursuant to subparagraph (A)(ii), they shall remain eligible for such acquisition to the same extent as they were when the assistance was granted, so long as such assistance remains outstanding.

"(ii) The provisions of this subparagraph (B) may be used only when the Corporation's assistance was initially granted after April 15, 1986.

"(C) Where otherwise lawfully required, a transaction under this paragraph (3) must be approved by the primary Federal or State supervisor of all parties thereto.

"(D)(i) Before assisting a merger or acquisition permitted under subparagraph (A) or taking final action under subparagraph (B), the Corporation shall consult the State bank supervisor of the State in which the bank in danger of closing is chartered.

"(ii) The State bank supervisor shall be given a reasonable opportunity, and in no event less than forty-eight hours, to object to the use of the provisions of this paragraph.

"(iii) If the State supervisor objects during such period, the Corporation may use the authority of this paragraph only by a unanimous vote of the Board of Directors. The Board of Directors shall provide to the State supervisor, as soon as practicable, a written certification of its determination.".

(4) by redesignating subparagraphs (i) through (iii) of paragraph (4) as subparagraphs (A) through (C), respectively.

(5) by amending newly redesignated subparagraph (4)(A) to read as follows:

"(4)(A) Neither section 3(d) of the Bank Holding Company Act of 1956, section 408(e)(3) of the National Housing Act, any provision of State law, nor the constitution of any State, shall bar approval, consummation or retention of an acquisition authorized under paragraph (2) or (3), except that an out-of-State bank may make such an acquisition only if such ownership is otherwise specifically authorized.".

(6) by adding new subparagraphs (D) and (E) to paragraph (4) as follows:

"(D) An out-of-State bank holding company that acquires, directly or indirectly, a bank under paragraph (2) or (3) shall thereafter be entitled to acquire additional banks located in the three largest metropolitan or consolidated metropolitan statistical areas or cities in any State in which the acquired bank is located to the same extent as a bank holding company that is principally located (as such term is defined in section 3(d) of the Bank Holding Company Act of 1956) in such State.

"(E) A holding company which, directly or indirectly, acquires control of one or more banks or a holding company under paragraph (2) or (3) shall not, by reason of such acquisition or expansion, be required as the result of the law of any State to divest any other bank or banks or be prevented from acquiring, directly or indirectly, any other banks or holding company.".

(7) by striking "to permit" in paragraph (5).

(8) by striking out "closed" the second time it appears and "bank" the sixth time it appears in subparagraph (6)(A).

(9) by redesignating subparagraphs (B) and (C) in paragraph (8) as subparagraphs (D) and (E), respectively, and by inserting after subparagraph (A) the following new subparagraphs:

"(B) a bank is 'in danger of closing' if—

"(i) the bank is not likely to be able to meet the demands of its depositors or pay its obligations in the normal course and there is no reasonable prospect for it to do so without Federal assistance; or

"(ii) the bank has incurred or is likely to incur losses that will deplete all or substantially all of its capital and there is no reasonable prospect for replenishment of the bank's capital without Federal assistance; or

"(iii) other grounds exist or are likely to exist under applicable State law for closing the bank; and

"(C) banks are 'affiliated' if each is a subsidiary (as defined in section 2(d) of the Bank Holding Company Act of 1956) of the same holding company; and"

(10) by adding a new paragraph (9) to read as follows:

"(9) Nothing in this subsection shall prevent the Corporation, in its sole discretion, from assisting, directly or indirectly, the acquisition of an open or closed insured bank by an out-of-State bank or holding company where such an acquisition is otherwise authorized under applicable State law.".

(11) by adding a new paragraph (10) to read as follows:

"(10) In any transaction authorized under this subsection, no assistance by the Corporation shall be provided to a subsidiary of a holding company that is not an insured bank.".

UNASSISTED EXTRAORDINARY ACQUISITIONS

Sec. 3. Section 3(d) of the Bank Holding Company Act (12 U.S.C. 1842(d)) is amended by designating the first paragraph thereof as paragraph (1) and inserting at the end thereof of the following new paragraphs:

"(2) Notwithstanding the provisions of paragraph (1) of this subsection or any provision of State law or the constitution of any State.

"(A) a bank holding company may acquire and retain the shares or assets of—

"(i) a bank located in another State if such bank has total assets of $250,000,000 or more and is in danger of closing; or

"(ii) two or more affiliated banks in danger of closing that together hold assets that total $250,000,000 or more and that represent 33 per centum of the total assets of all affiliated banks;

"(B) a bank holding company that acquires a bank or banks in danger of closing under subparagraph (A) may acquire a bank holding company that controls such bank or banks and/or may acquire the assets or shares of any bank affiliated with such bank or banks, provided in either case that the total assets of such bank or banks in danger of closing represent at least 33 per centum of the total assets of all affiliated banks;

"(C) A bank holding company that acquires the assets or shares of a bank in danger of closing under subparagraph (A) or (B) may acquire additional banks located in the three largest metropolitan or consolidated metropolitan statistical areas or cities in any State in which a bank acquired pursuant to this paragraph is located to the same extent as a bank holding company that is principally located (as defined in paragraph (1) hereof) in such State;

"(D) A bank holding company that acquires and retains control of one or more banks pursuant to this paragraph shall not, by reason of such acquisition or retention, be required to divest any other bank or banks or be prevented from acquiring any other banks.

"(3) A bank holding company may not acquire the shares or assets of a bank or bank holding company under paragraph (2)(A) or (B) unless the acquisition has been approved by the board of directors of such bank or of a bank holding company that controls such bank.

"(4)(A) A bank is in danger of closing if the appropriate Federal or State chartering authority certifies in writing that—

"(i) the bank is not likely to be able to meet the demands of its depositors or pay its obligations in the normal course and there is no reasonable prospect for it to do so without Federal assistance; or

"(ii) the bank has incurred or is likely to incur losses that will deplete all or substantially all of its capital and there is no reasonable prospect for replenishment of the bank's capital without Federal assistance; or

"(iii) other grounds exist or are likely to exist under applicable State law for closing the bank.

"(B) A bank is affiliated with another bank if each is a subsidiary of the same bank holding company.

"(C) The assets of a bank shall be determined on the basis of its most recent report of condition.

"(5)(A) No bank in danger of closing or bank holding company that controls such bank shall enter into any discussions relating to the acquisition of such bank under paragraph (2) unless—

"(i) the State bank supervisor for each State in which such bank or its affiliated banks is located has been notified of such proposed discussion, and

"(ii) such bank or bank holding company has attempted to arrange an acquisition that does not require assistance under section 13(c) of the Federal Deposit Insurance Act or use of the interstate provisions of paragraph (2). An application submitted under paragraph (2)(A) or (B) must describe efforts made by such bank or bank holding company to satisfy this requirement and the reasons for the rejection of any proposals submitted.

"(B) Before approving an application pursuant to paragraph (2) involving a bank in danger of closing or its affiliated banks, the Board shall consult the State bank supervisor of the State or States in which the bank or banks are located.

"(C) The State bank supervisor or supervisors shall be given a reasonable opportunity, and in no event less than forty-eight hours, to object to approval of the application.

"(D) Except as provided in subparagraph (E), the Board shall not approve the application if, during the notice period provided in subparagraph (C), such State bank supervisor certifies to the Board that—

"(i) a person or persons have, prior to the notice period in subparagraph (C), offered or attempted to offer to acquire each of the banks in danger of closing in a transaction that does not require assistance under section 13(c) of the Federal Deposit Insurance Act or use of the interstate provisions of paragraph (2), and

"(ii) such person or persons, in the judgment of such State bank supervisor, are likely to be able to secure all regulatory approvals necessary to consummate such acquisition promptly, and to comply with all applicable financial and managerial and other regulatory requirements, including recapitalizing all such banks in danger of closing without impairing the financial resources of the acquiring person or persons.

"(E) The Board may approve the application if the Board determines that the person or persons certified by the State bank supervisor under subparagraph (D) do not have the financial resources necessary to obtain regulatory approval to acquire such bank, including the resources to recapitalize all such banks in danger of closing without impairing the financial resources of the acquiring person or persons, or that such person or persons do not meet other applicable regulatory requirements.

"(6) If the Board has received a certification from the appropriate Federal or State chartering authority pursuant to paragraph (2) or section 13(f) of the Federal Deposit Insurance Act that a bank is in danger of closing, the Board may dispense with the notice and hearing requirements of section 3(b) of this Act with respect to any application received to acquire such bank or its affiliated banks and may reduce the post-approval waiting period of section 11 of this Act to five days or, if the Board finds that immediate action is necessary to prevent the probable failure of any such banks, eliminate such period.".

WAIVER OF NOTICE REQUIREMENTS

SEC. 4. Section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) is amended by adding a new sentence to the end thereof to read as follows: ". In the event an application is filed under this paragraph in connection with an application by a bank holding company to acquire control of a bank in danger of closing or its affiliated banks pursuant to section 3(d)(2) of this Act or section 13(f) of the Federal Deposit Insurance Act, the Board may dispense with the notice and hearing requirement of this paragraph and the

Board my approve or deny the application under this paragraph without notice or hearing;".

SUNSET PROVISIONS

SEC. 5. (a) Section 141(a) of the Garn-St Germain Depository Institutions Act of 1982 (12 U.S.C. 1464 note) is amended by striking out "April 15, 1986" and inserting in lieu thereof "April 15, 1991".

(b) Effective upon April 15, 1991, the provisions of law amended by this Act shall be amended to read as they would without such amendments.

(c) The repeal or termination by this section 5 of any amendment made by this Act shall have no effect on any action taken or authorized while such amendment was in effect.

○

Chairman **St. Germain**. Before we take final action on H.R. 4701 and the other agency legislative proposals, the facts regarding the so-called emergency, the full cost of the proposed remedies, the dimensions of the purported benefits, what is or what is not a failing bank, will have to be thoroughly weighed by the members of this subcommittee, as well as the full committee.

Mr. Wylie.

Mr. **Wylie**. Thank you very much, Mr. Chairman.

I want to welcome our distinguished panel before us this morning, and I look forward to their testimony. I know it will be very meaningful to us in our deliberations on this very important issue.

I would say that I do support the extension of the emergency provisions of Garn-St Germain in some form. I think the provisions have been extremely helpful to the regulators in resolving the problems that are confronted by some of our financial institutions, which have been experiencing difficulty and distress as a result of problems in agriculture, energy, and other sectors of our economy.

The regulators tell us that they need to enhance these authorities to increase further the options and flexibility available to them in responding to financial institution failures.

I may say that it is unavoidable that over the foreseeable future, there will continue to be situations where financial institutions will have problems so severe that they will be unable to operate without additional capital. We may be witnessing such situations in some areas of our country right now. Bank supervisors must have adequate tools to deal with emergency situations quickly and effectively. This is one of the most important lessons we all learned from the Ohio thrift crisis just last year. No one should have to experience the disruption and loss of daily services that so many Ohioans suffered through during the last year.

So I do feel we need to have legislation to enhance the regulators' ability to respond to failing bank situations, and that it should be based on the principles of protecting the safety and soundness of the banking system, minimizing the impact of bank failures on the local community and protecting the Federal Deposit Insurance Fund.

The proposed bill submitted by the regulators would seem to take all of these interests into account, but there are many questions that we will want to explore with this distinguished panel this morning, and I am confident that we will move forward on this very important issue in a timely fashion.

Thank you very much, Mr. Chairman.

Chairman **St Germain**. Mr. Dreier has asked to be recognized.

Mr. **Dreier**. Thank you very much, Mr. Chairman. I too would like to welcome the panel and commend you for calling these hearings. It is apparent that there is a very serious problem facing this country in the area of agricultural banks, energy banks and thrifts.

It is my feeling that we have seen a very worthwhile proposal brought forth by the regulators, and it is my hope that we don't tie many restrictive measures to that measure that would block the legislation.

I hope when we have completed these hearings that our committee will expeditiously mark up the bill.

Thank you very much, Mr. Chairman.

Chairman ST GERMAIN. I thank the gentleman for his statement. There are a lot of people with a lot of hopes there.

Now we have a very distinguished panel. That panel, you might call it a potpourri, but I think it is important, because we have on hand industry representatives, and then again, those industry representatives wouldn't be here—wouldn't exist, wouldn't be heard from, if it weren't for the customers that they serve, I think. The customers are very, very important. They are known as "consumers." They are oftentimes forgotten when we consider legislation affecting financial institutions, but there are some members of this committee, including this chairman, who think the consumer is very important.

This legislation's effect on the consumer cannot be dismissed. It is an integral part of our discussions and deliberations.

So we welcome you all. We will put all of your statements in the record in toto, without objection.

We will now go according to the listing on the subcommittee notice. Our first witness will be a very distinguished gentleman from Texas, Mr. Charles Doyle, who has the honor of being the president of the Independent Bankers Association of America.

We welcome you, Mr. Doyle. You may proceed.

STATEMENT OF CHARLES T. DOYLE, PRESIDENT, INDEPENDENT BANKERS ASSOCIATION OF AMERICA (IBAA)

Mr. DOYLE. Good morning, Mr. Chairman. I am Chuck Doyle from Texas City, TX, chairman of Gulf National Bank there. As you indicate, I have the privilege and honor of serving as president of the IBAA, representing some 7400 medium and small banks from throughout all the 50 States.

Mr. Chairman, I appreciate the opportunity to appear before your committee and present our views on the regulators' dramatically liberalized emergency interstate takeover proposals. We wholeheartedly agree with your recent characterization of these proposals as "interstate banking without the trigger." If they are adopted, control of the banking industry will become vested in fewer and fewer hands and States will have little control over their own financial destiny.

There is no doubt that these proposals would be welcomed by those who favor the removal of geographical barriers to banking structure.

Before I discuss the specifics of the regulators' bill, I must strongly emphasize our members' view on the issue of emergency interstate takeovers and the nonbank bank loophole, because we feel they must be linked.

The existence of the loophole is inconsistent with the aims of the emergency takeover provisions. Unless the loophole is closed, potential acquirers will be able to open up a brandnew nonbank bank instead of buying a troubled institution. The nonbank bank option would permit the out-of-State bank to make a fresh start without any of the problems contained in a failed or failing bank.

Therefore, Congress should not extend, much less liberalize the emergency authorities, unless it closes the nonbank bank loophole at the same time. A key motivating factor in the regulators' proposal is a desire to protect the insurance funds by increasing the number of buyers for trouble institutions. This is certainly a worthy goal; however, this should not be your only goal.

Diversity, the separation of banking and commerce and local control of financial assets have long been cornerstones of our country's financial and political system. In fact, the deposit insurance funds were established to make it possible for thousands of local institutions to remain strong participants in the economic lives of their communities.

We urge the Congress to be sensitive to this goal, as it considers proposals like the emergency takeover bill. While we recognize that some liberalization of Garn-St Germain authorities may be necessary, the regulators' proposals go too far. We oppose the arbitrary dropping of the threshold from $500 to $250 million. This change alone would nearly double the number of banks exposed to interstate takeover from the present 500 number to just under 1,000. We have seen no facts that would justify this wholesale addition to the interstate auction block, even in Texas.

The Texas Banking Commissioner, Jim Sexton, said a week ago that the Douglas amendment is not for sale. I am coming here to suggest that it shouldn't even be for rent, unless there are restrictions protecting States' rights. When similar proposals were made last year, we indicated that we preferred that Congress retain the $500 million threshold and provide an exemption for the four largest banks in those States with fewer than four banks over the threshold. Under this approach, there would be at least four banks in every State of the Union that could be acquired by an out-of-State organization, if there were no in-State buyers. It would avoid the problem posed by the State where one of its largest banks is troubled and yet there is no in-State buyer large enough to take it over; however, this effect would be limited to States where there are very few or no banks over the threshold.

On the other hand, the regulators' blanket proposal would affect all States, even those where there are ample numbers of potential in-State buyers at this time. I understand the regulators have not rejected this kind of solution. They have simply proposed a different one. I hope your committee will give consideration to the substitute provision we are suggesting. The regulators also have proposed that the interstate takeover provisions be extended to banks in danger of closing. Current law applies only to closed banks, which provides a significant safeguard against using this authority, in cases where it is not absolutely necessary.

If the safeguard is to be weakened in order to save money for the FDIC, other protections should be added.

The current regulators' proposal lacks such protection. It simply states that a bank or bank holding company may be sold off interstate, if it is in danger of closing. Though the bill includes a definition of this phrase, it is to us unacceptably vague. At a minimum, we should set specific standards for determining that a bank is in danger of closing, making it clear that a bank's capital must have fallen below 1 percent, before it can be considered in danger of closing.

Another important safeguard against overuse of interstate takeover authority involves the role of the State officials. We agree with CSBS and the ABA that any acquisitions under the liberalized authority should not take place, unless the State banking regulator in the target bank's home State does not object.

We also believe that the target State's Governor should certify that the problem cannot be handled within the State, before Federal officials arrange an interstate takeover. These protections will help counterbalance the increase in the number of banks exposed to interstate takeover under the change in the size of eligible banks and the proposed addition of failing banks to those now covered.

We also believe that the stockholders in a failing bank should be discouraged from seeking an interstate solution to their problems. In those cases, there is little, if any, intrinsic value left in the bank. The only value to an out-of-State acquirer would be the interstate franchise right that is being sold. Therefore, we recommend that stockholders who agree to sell their banks to an out-of-State buyer receive no compensation.

Another way to encourage an in-State solution would be to permit the in-State bidders to rebid, if their initial bid falls within 20 percent or $20 million of the highest bid in the initial round. Compared to current law, the figures are 15 percent and $15 million.

One serious problem with the current bidding procedure is that under current authority the FDIC must conduct the process overnight, and at best, over the weekend, which leads to panic and very unbusinesslike approaches to the purchase. This does not give the mediumsized potential acquirers enough time to properly evaluate the failing bank and make a prudent bid.

Money center banks, on the other hand, can well afford to take the risks, if they are essentially, bidding on a valuable interstate franchise. This inequity should be addressed by giving the FDIC the conservatorship or bridge bank authority that has been requested. This would permit the agency to stabilize the troubled bank for a limited period of time not to exceed 18 months and to allow for a more orderly bidding procedure.

One feature of the operation of the emergency takeover law has been the dominance of the money center banks. Time after time, they have extended their reach by acquiring institutions in key States. We recommend that any extension of the emergency provisions include concentration limits, so that the very largest bank organizations will not be able to acquire even more prominent dominance.

This would permit next level regional banks to participate. These institutions are still rather large but lack the market dominance enjoyed by the money center banks.

The regulators' bill also puts holding companies on the interstate action block, if at least 33 percent of the holding company's banks are in danger of closing and total $250 million in assets. Current law applies only to individual banks not the holding company. The regulators' proposal would expose almost 3,000 banks and over 500 holding companies to interstate takeover and provide out-of-State buyers with vehicles for dramatic expansion within their target States.

We oppose this proposal. We believe that the advantages of selling parts of the holding companies, or nonbank subsidiaries, in the case of trouble individual banks, could be substantial. A holding company's more valuable subsidiaries should be sold to raise capital for the troubled parent.

This committee is well aware of a recent precedent for this procedure when Chrysler Corp. sold its profitable tank division and used the capital to bolster its main automobile manufacturing business. Chrysler did, indeed, shrink, but that was the price it had to pay in order to get Federal assistance.

We believe that our regulators should require that kind of self-help of our financially strapped commercial bank holding companies.

If Congress is persuaded it must expose the holding companies to takeover, it should adopt a very tight test. We remain unconvinced that these low asset tests are necessary or desirable. It may well be a case of regulators asking for more than they ever hope to receive. Instead, if Congress approves the acquisition of holding companies, it should adopt the $500 million threshold and require that at least 65 percent of the holding company's bank assets have failed rather than the 33-percent standard that the regulators have proposed.

Of course, the safeguards we've outlined earlier in this testimony should also apply in these cases.

Finally, the bill would grant an out-of-State acquirer the same expansion rights as the in-State holding company would have in the target States three largest metropolitan areas. We feel this would undermine the State banking laws, such as those that we have in Texas, and that limited expansion to holding companies. We feel this provision undercuts State control imposed by other provisions of the regulators' proposal. This is unnecessary, and we hope it will be eliminated.

We are also concerned about the provision in the current law which permits any company to buy a failing thrift. Though this authority has not been acknowledged as a major feature of the law, as long as it remains, it is a threat to the separation banking and commerce and inconsistent with closing the nonbank bank loophole.

Our concern here is that national firms, especially retail firms, will purchase existing banks or thrifts, convert them into nonbanks and begin accepting insured deposits nationwide. We hope this possibility can be eliminated by removing the "any company" language in the emergency takeover provisions and by closing the nonbank bank loophole.

I hope these comments will be helpful to you, as you consider further extensions and modifications to the authorities of the Garn-St Germain Act. We look forward to working with you on behalf of the community banks of America, as you consider these important matters facing our industry. Thank you.

[The prepared statement of Mr. Doyle may be found at the conclusion of this day's hearing in the appendix.]

Chairman **St Germain**. Thank you, Mr. Doyle.

Our next witness will be Mr. Robert Gaiswinkler, vice chairman of this comparatively new organization known as the National Council of Savings Institutions, which consists, I am told, of the biggies, S&L's, savings and loans, the real giants, as well as the mutual savings banks.

So, Mr. Gaiswinkler, we will put your entire statement in the record, and you may proceed.

STATEMENT OF ROBERT S. GAISWINKLER, VICE CHAIRMAN, NATIONAL COUNCIL OF SAVINGS INSTITUTIONS

Mr. GAISWINKLER. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, my name is Bob Gaiswinkler, president of the National Savings & Loan in Milwaukee. I am appearing today on behalf of the National Council of Savings Institutions as their vice chairman.

We very much appreciate the invitation to testify on these regulatory matters of critical importance to ensuring the continued stability of our depository system.

We applaud your responsiveness to the expressed concerns of the Federal supervisory agencies for statutory changes to the emergency interstate acquisition authority originally enacted as title I of the Garn-St Germain Act of 1982. The changes would apply to both savings banks and commercial banks.

I am pleased to say at this time that all the FDIC-insured savings banks are now operating at a profit. We suspect that by the end of calendar year 1986 they will show record earnings for that year.

We are especially pleased that these hearings also include the possible modifications to Federal law necessary to implement the FSLIC recapitalization, which has been approved by the Cabinet Council on Economic Affairs.

Under this plan additional funding would be made available to the FSLIC through capital contributions made by the 12 Federal home loan banks. Since the stock of these banks is owned entirely by individual thrift institutions, the recapitalization plan is truly and appropriately a private sector remedy.

The National Council supports both the expanded industry acquisition authority and the FSLIC recapitalization plan. This committee may be assured that we are prepared to do everything we can to ensure prompt enactment of the enabling legislation necessary for both proposals to go forward.

You have also requested our views on a third subject; namely, increased supervisory authority for the Federal Home Loan Bank Board.

Two proposals along this line have already been introduced. In our view, both these bills raise a number of troublesome questions. Moreover, these bills do not appear to carry the degree of immediacy that accompanies the other proposals under discussion today.

Turning first to the so-called regulators' proposal, the original bill encountered opposition in some quarters on grounds that it would allow out-of-State banks to enter States that they would otherwise be precluded from and then to branch within that State or its regional compact on the same terms as local institutions.

More recently, amendatory language, transmitted on April 23, 1986, by FDIC Chairman L. William Seidman and Federal Reserve Chairman Paul Volcker, attempts to address this issue by limiting the out-of-State bankholding company to three additional acquisitions to be located in the three largest cities or metropolitan areas into which the acquired bank could enter.

As a general proposition, the National Council favors the removal of geographic barriers to competition in banking, and we support the regulators' bill as another step in this direction.

The modification with respect to postacquisition branching rights strikes us as a sensible compromise between deference to State branching laws and the need for the Federal authorities to encourage out-of-State bids for failing institutions.

These amendments would also institute a rough symmetry between the interstate acquisition rules applicable to FDIC-insured banks and those applicable to FSLIC-insured institutions under the policy change adopted by the Federal Home Loan Bank Board on April 24, 1986. That change would allow any company acquiring a failing thrift to branch or otherwise enter three additional States.

The second major change contained in the regulators' bill would reduce the asset size criteria in the comparable statutory provisions applicable to thrift institutions, and we see no compelling reason to continue the statutory disparity.

The third suggested change would allow the regulators to come to the aid of a bank that is in danger of closing as opposed to the requirement in current law that speaks of a closed bank.

I would note that the FDIC already has this authority with regard to mutual savings banks, and again the record shows that this administrative discretion has been used both sparingly and prudently. This proposed change would permit the FDIC to act more promptly and would therefore appear to represent a significant improvement in the supervisory tools available to the FDIC to conserve its resources.

With regard to the FSLIC recapitalization, it is frequently said that the capital of an individual institution is the first line of defense for the Federal deposit insurance agencies and that this is both true on the macro and micro basis.

It is precisely for this reason that we remain gravely concerned over the continuation of the FSLIC's special assessment, since its bottom line impact is to transfer financial resources from the private sector to a Government agency and to penalize healthy institutions in order to deal with the FSLIC's problem cases.

Because the special assessment represents a serious financial drain on the profitability of healthy institutions, it is imperative that it be ended as soon as possible.

Under the terms of the FSLIC recapitalization plan being developed by the Treasury Department and the Federal Home Loan Board, the special assessment would reportedly be phased out over a period of 5 years. We would like a timeframe spelled out in the legislation that is more responsible to ensure the future viability of our institutions.

Otherwise, [illegible] support the broad outlines of the Treasury plan and compliment Under Secretary George Gould for the time, effort and negotiating skills he has put into this effort.

In February of last year, the council suggested in congressional testimony that the resources of the Federal home loan banks be utilized as part of the solution to the FSLIC problem. Unfortunately, the suggestion was not favorably received by either the Bank Board or the individual district banks when it was first made.

In the interim, valuable time has been lost and the number of problem cases requiring real money solutions continue to grow. We therefore urge that the Congress act as prompt as possible on the legislative changes deemed necessary for the Bank Board to implement the planned participation by the district banks.

Finally, with respect to increasing the supervisory authority of the Federal Home Loan Bank Board, we note the two legislative proposals that have already been introduced, by request, by Chairman St Germain and Mr. Wylie.

These bills are designed primarily to strengthen the enforcement tools currently available to the agency, but in both cases the bills go much too far and include such issues as Federal override of State powers and the so-called thriftiness test.

Given the short frame of time which Federal regulatory agencies have set forth for addressing the serious financial situation confronting the FSLIC and the FDIC, we do not believe it would be feasible to work through the many changes that would be needed in these two bills in order to produce a legislative package that would garner the necessary support and move through the Congress in a timely manner.

Chairman ST GERMAIN. You don't think we have the capacity to do it?

Mr. GAISWINKLER. Certainly, you have the capacity. I am just mentioning some of the problems.

Chairman ST GERMAIN. What you are questioning is whether or not we have the capacity and ability to do it.

Mr. GAISWINKLER. I think you may not have understood what I said.

Chairman ST GERMAIN. I understand exactly what you said. I hear very well. I understand the King's English very well.

I don't like you saying, let us decide whether or not we can do it, but don't tell us we can't do it.

Mr. GAISWINKLER. I understand, Mr. Chairman. Thank you.

Now, where was I? In these two bills, in order to produce a legislative package that would garner the necessary support to move these through Congress in a timely manner, but we understand that if necessary, you could do that very quickly.

Is that all right, sir? [Laughter.]

In closing, Mr. Chairman and Members of the subcommittee, I would like to emphasize that the National Council supports the proposed legislation facilitating the interstate acquisition of failing banks as well as the changes in Federal law necessary to implement the FSLIC recapitalization.

When the latter is reduced to specific legislative language, we would appreciate the opportunity to submit additional written testimony for your comments.

With regard to additional enforcement powers, we respectfully suggest that they best await subsequent legislative consideration.

I would be pleased to answer any questions you may have.

[The prepared statement of Mr. Gaiswinkler may be found at the conclusion of this day's hearing in the appendix.]

Chairman ST GERMAIN. Thank you.

Our next witness will be Mr. Alan Fox, the legislative representative of the Consumer Federation of America.

Your testimony is already in the record. You may proceed.

STATEMENT OF ALAN FOX, LEGISLATIVE REPRESENTATIVE, CONSUMER FEDERATION OF AMERICA

Mr. Fox. Thank you, Mr. Chairman, for the opportunity to testify on proposals by the Federal bank regulators to liberalize their emergency interstate acquisition authority.

Our written statement and my oral statement and Ms. Livingston's oral statement will be made on behalf of six community and consumer organizations that operate nationwide.

Those include the Consumer Federation of America, composed of over 200 citizens organizations which have a membership of over 30 million people; Consumers Union, the publisher of Consumer Reports, which has a circulation of 3.5 million; the National Consumers League, America's oldest consumer organization, founded in 1899; Public Citizen's Congress Watch, the lobbying arm of Public Citizen, a consumer organization with 80,000 members nationwide; the U.S. Public Interest Research Group, which represents the State public interest research groups across the country; and also ACORN, a national grassroots community organization which has as its members 75,000 low- and moderate-income families.

We believe that the regulators' proposal, which has been introduced in H.R. 4701, must be viewed as a whole, as a single entity. Viewed that way, these proposals seek nothing less than a broad expansion of Federal authority to order interstate acquisitions of banks. These proposals are being offered under a general declaration that there is an emergency that justifies a more rapid expansion of interstate activity than current law permits.

We question whether such an emergency exists to an extent that present law is unable to manage. We question whether these proposals would allow the regulators to meet the problems that they have identified in their justification for the bill.

The clearest result of these proposals would be to remove some of the last remaining barriers to full nationwide banking.

As written, the proposals provide substantial benefits to banks and further undermine local control over banking without providing any compensating assurances that consumer, neighborhood, and community needs will be considered, let alone that those needs will be met.

Let's be clear about the relationship between this bill and the current crises in some sectors of the banking industry.

This legislation would not have allowed the acquisition of a single bank that was liquidated in 1985. There were 22 banks of all types, agricultural and otherwise, that the FDIC was forced to liquidate in 1985.

The largest of these banks had deposits of only $31.6 million, well below the threshold proposed by the bill. In fact, not one of the 120 commercial banks that failed in 1985, whether liquidated or subsequently acquired, had assets of more than $250 million.

We wonder why additional powers are needed by the regulators when it seems that the powers available in current law were not even needed in 1985.

As we said, the regulators' proposal poses a broad expansion of interstate authority. We find the idea that State expansion of interstate authority over the past year has been insufficient to be a curious concept.

Less than 1 year ago, the U.S. Supreme Court ruled that the States do have broad authority under the Douglas amendment to allow interstate transactions, emergency or otherwise. In the wake of that ruling, most State legislatures have considered regional compact legislation, reciprocal interstate legislation, or both or some other variety.

These debates have resulted, in a period of less than 1 year in passage of approximately 20 new State statutes authorizing regional or national interstate acquisitions. Currently, over 30 States now have such laws, and more are anticipated in the next few months.

Several States at the same time have revamped intrastate branching restrictions as well.

The Federal regulators seem to believe, however, that these rapid and sweeping changes in banking structure aren't enough. They propose to make it even easier for banks to buy their way into States through emergency acquisitions and then to expand within those States, notwithstanding the fact that the State may be one that has not chosen to allow such acquisitions or expansions.

The effect of all these changes in the past year and of the proposed changes in banking structure made by the regulators is a very strong move away from locally controlled, locally owned banks.

We believe that safeguards must be enacted to substitute for reduced local control and to ensure that public responsibilities are attached to the great benefits banks are receiving.

Regulators are arguing that more incentives are needed to encourage interstate acquisitions. We believe that under current law, these incentives are more than adequate.

There should be no mistake about what happens when a bank is purchased in an emergency by an out-of-State bank. The acquiring bank is not merely buying the bank—it is buying access to a desirable new market.

Expanding banks are not looking for insolvent banks to acquire because they like the challenge of resuscitating such banks or for some other altruistic reason. They are looking for such banks because buying one opens up new opportunities for later expansion in a market that is not currently available.

Now, between the reduction of the size threshold, the availability of failing as well as failed banks, and provisions for unassisted takeovers, the regulators' proposal will dramatically expand the supply of banks available for "emergency" interstate takeovers.

These acquiring banks will have many more options available for their initial entry into the States, and these options will be less costly to the acquirers. The FDIC could, as a result, find its ability to set priorities and to negotiate deals that are in the public interest somewhat diminished.

Obviously, there must be a delicate balance between benefits and costs of acquiring banks of emergency interstate acquisitions. The assumption underlying this proposal seems to be that the benefits must be increased and the costs must be decreased.

Let's look at the current law, the current situation.

We believe that the existing benefits to acquiring banks are consistently underestimated and the costs to acquiring banks are consistently overstated.

A few months ago, for example, Chase Manhattan was willing to pay $62.6 million to acquire a failed bank in Florida. That bid was twice the offer of the second highest bidder. Even for that bid Chase was required to wait 18 months before acquiring additional Florida banks and agreed to inject an additional $35 million in new capital.

Why was Chase willing to pay a price for an insolvent bank, a price that was regarded by its competitors as a premium?

Obviously, the opportunity to enter the Florida market, even under some restrictions, was of enough benefit to Chase to pay that premium.

There is another reason as well. The obligations and costs incurred by Chase are far less than meet the eye. Chase did not pay a premium price for an insolvent bank. According to an article about the acquisition in the Wall Street Journal, the transaction "leaves Chase with a so-called clean bank or one believed to be free of bad loans."

The FDIC paid $114 million for the privilege of taking $214 million in presumably nonperforming assets off of Chase's hands.

Now, even conceding that this deal is advantageous to the FDIC—and it probably is—it doesn't require a lot of analysis to see that Chase has come out very well. For less than a $100 million it bought a bank with almost $400 million in performing assets and no known bad loans.

It has gained access to a market that it has long coveted. It is under no obligation to take any significant steps to meet community or consumer needs, and as long as its performance is not outrageously oblivious to local needs, its foothold and it opportunity to expand are protected.

What more can Chase possibly need from the law?

We believe that this case points to some false assumptions about emergency acquisitions.

One is, as was pointed out, the banks who make these acquisitions are taking enormous burdens upon themselves by purchasing sick institutions.

Another is that potential acquirers are routinely deterred from making emergency acquisitions because they would be powerless to expand within the State of acquisition.

Finally, there is the assumption that consumers are automatically benefitting from these emergency acquisitions.

Before Congress approves additional efforts to sweeten the pot for acquiring banks, we believe this committee should conduct a thorough oversight of the existing law. Congress should determine whether there is in fact a crisis that is not being met.

It should also examine carefully the acquisitions approved under existing law and see what the effects of those acquisitions have been.

How is the bidding process operated?

What has happened to the services of banks acquired under this authority?

What is the impact on local communities of such acquisitions?

What direct and indirect benefits have acquiring institutions realized?

Until the total costs and benefits to all parties under current law are carefully explored, additional benefits should not be approved.

Mr. Chairman, in our written statement, we have made a number of legislative proposals that we believe should be a part of any package, dealing with interstate acquisition authority.

Ms. Livingston will describe those proposals and deal with our major points of those proposals in her statement.

Thank you very much.

[The prepared statement of Mr. Fox may be found at the conclusion of this day's hearing in the appendix.]

Chairman St Germain. Thank you.

Now we will hear from Franci Livingston, staff attorney for Public Citizen's Congress Watch. Your statement as well is in the record.

STATEMENT OF FRANCI LIVINGSTON, STAFF ATTORNEY, PUBLIC CITIZEN'S CONGRESS WATCH

Ms. Livingston. Thank you, Mr. Chairman. I very much appreciate the opportunity to testify today on behalf of the consumer and community groups who have submitted joint testimony on the proposal by the Federal bank regulators. Consumers have a great stake in any restructuring of the banking industry and how it meets basic needs.

As Alan Fox stated, my testimony will focus on our two most important legislative recommendations—community benefit standards and anticoncentration standards. These improvements are necessary to ensure that consumer and community needs are protected when emergency takeovers are conducted, and as interstate acquisitions of all types proliferate.

Almost a year ago, on June 12, 1985, the full Banking Committee approved a consumer benefits test as part of the interstate banking bill. We commend the committee for this very important action, and for ensuring that banks would be required to meet public responsibilities when they cross State lines.

Those standards have never become law—through no fault of this committee. Yet, approximately 20 States have authorized regional or national interstate acquisitions just since June, for a total of 30 States now with that type of law.

Now, the Federal banking regulators are proposing a bill that will further accelerate interstate acquisitions. Strong standards must be enacted before such acceleration is allowed to occur.

Banks are chartered to serve the public purpose of meeting the needs of their local community. Even without interstate banking, many banks seem to ignore community responsibilities in terms of both credit and deposit needs.

For instance, last year, Consumer Federation of America surveyed bank fees in 14 cities and the District of Columbia. The study showed that of 142 banks and savings and loans, 108 would not cash a Government check for a nonaccount holder at any price.

It also found that the average cost of a small balance, noninterest checking account was $105 per year. This is a high price to pay considering the fact that such an account was defined as one where the average balance does not rise above $200.

On the credit side, a survey of the mortgage lending of 10 cities made part of the record in hearings held by the Housing Subcommittee last March showed that moderate income neighborhoods are underserved by local lenders.

In the best case, low- and moderate-income areas in San Francisco, representing 29 percent of all communities, received only 14 percent of total mortgage financing.

In the worst case, low- and moderate-income areas of Gary, IN, representing 25 percent of all low- and moderate-income communities, received only 2 percent of total mortgage financing.

There is no reason to believe that interstate banking per se will improve the picture. It has been argued that interstate banking will increase competition, but most interstate entries are achieved by acquisition and, thus, do not add to the numbers of competitors.

Moreover, there is no reason to believe that banks who make interstate acquisitions will compete to offer low cost basic checking accounts, or to offer mortgages and loans to low- and moderate-income neighborhoods.

The worst danger is that expanding banks will use new markets only to gather deposits that will be invested elsewhere, leaving the local community with unmet credit needs.

Those banks that choose to take advantage of the benefits of interstate banking should also be required to meet high standards for community service, since there is ample reason to believe they will not meet those needs on their own.

The community benefit safeguards approved by the committee looked to several factors, including the past record of an applicant who desires to make an interstate acquisition.

Only banks that have a better than average record of meeting credit needs in their existing communities under the Community Reinvestment Act are allowed to cross State lines. An interstate acquisition by a bank holding company can be approved, therefore, only if each of the subsidiary banks has a good or excellent rating under that act.

In addition, the Federal regulators must disclose the Community Reinvestment Act ratings and evaluations of the subsidiary banks. Currently, such ratings and evaluations are not publicly available. Disclosure of these evaluations and ratings provide accountability by helping to ensure that both Congress and the general public can monitor use of the ratings system and bank performance.

The past record of an institution is also taken into account in other ways. For instance, an applicant who has a pattern of closing branches in a manner that tends to exclude low- and moderate-income people, or failing to provide accessible deposit services would not be able to move across State lines.

The provision also looks to future commitments. It requires the applicant to make specific commitments about how the acquisition will significantly improve the availability of credit and deposit services to the community, including low- and moderate-income neighborhoods and small businesses. The acquired bank must also make loan data available so that the public can evaluate performance. Our position is that the consumer benefit standards must apply to all interstate acquisitions, including entry into the three largest metropolitan areas of the State following an emergency acquisition, as allowed in the regulators' proposal.

Somewhat modified standards should apply to emergency acquisitions. We understand that, in an emergency situation, it may be difficult to restrict acquirers on the basis of past performance. However, future commitments should be part of this process, and the same disclosure requirements should apply to emergencies as apply to other interstate takeovers.

Future commitments should not be different from emergency cases as opposed to other acquisitions because the acquirer is actually taking over a healthy bank.

The anticoncentration provisions approved by the committee in June as part of the interstate banking bill are also imperative. They address undue concentration of banking services on the State and regional level. They also address the absolute size of holding companies. The provisions thus help not only to protect competition, but also to prevent institutions from becoming so large that they would be difficult to regulate, and whose failure could have systemwide implications.

Thank you, Mr. Chairman. We look forward to working with you to ensure that consumer protections are part of any further acceleration of interstate banking.

[The prepared statement of Ms. Livingston may be found at the conclusion of this day's hearing in the appendix.]

Chairman St Germain. Thank you, Ms. Livingston.

Mr. Gaiswinkler, is it your organization that espoused and helped fund Professor Benson in his study, "Threatened Investment"?

Mr. Gaiswinkler. We published his findings, I think.

Chairman St Germain. You embraced them?

Mr. Gaiswinkler. Correct.

Chairman St Germain. And Professor Benson didn't do that study because he ran out of good books to read, or it was snowing too hard for him to play golf.

He did it because he was retained and paid to do it. Is that correct?

Mr. Gaiswinkler. Yes, sir.

Chairman St Germain. Taking that into consideration, I look at your testimony this morning. You seem to embrace H.R. 4701 in its entirety. No questions or anything about it.

But, listening to your testimony, I fail to hear you say anything about the actual need for the legislation. Everybody agrees that the imact of H.R. 4701 would impact severely the present trend toward interstate banking and alter the standing of State governments in determining its course, as brought out by the IBAA.

The question is whether we need to take this step. Is there really a banking emergency serious enough to justify the adoption of H.R. 4701?

And of course this is related to the question of the cost and benefits of FDIC assistance under H.R. 4701.

Now, given your thorough study by Professor Benson on direct investment, tell me, did you do a study here? Tell me why you feel H.R. 4701 is necessary and on what do you base this opinion?

Mr. GAISWINKLER. We have had the same problem with FSLIC, of course. And I speak as a savings and loan person. I believe that if the FSLIC had similar powers enacted years ago, we wouldn't be having some of the problems we are having right now.

Chairman ST GERMAIN. What powers? Like preventing direct investments in gambling casinos and window farms and all those kinds of other unrelated things?

Mr. GAISWINKLER. No, sir. I'm talking about coming into an institution that is having problems, and you can't find someone else to come in, particularly in the State, to bid on that institution.

That is the primary reason for our backing this.

Chairman ST GERMAIN. You have not the power to prevent brokered deposits being brought in by the carload or a truckload to an institution that's already in trouble.

How do you feel about that one?

Mr. GAISWINKLER. Personally, I am opposed to brokered deposits. The National Council opposes the use of brokered deposits by institutions that do not meet net worth requirements.

Chairman ST GERMAIN. That's good to hear.

Tell me, can you give me some evidence of this financial emergency that exists?

You know, it's all right. Everybody's talking about it. But, give me some facts.

Mr. GAISWINKLER. If I am correct, there are some banks that are in trouble because of energy loans and agriculture loans.

Chairman ST GERMAIN. I was asking you to be specific. You know, you're appearing on behalf of this very venerable, or would-be venerable organization. And you have all kinds of facts to present on your opposition to direct investment rates.

Now, how about some facts on your support of H.R. 4701?

Mr. GAISWINKLER. We support the bill because we feel that the FDIC should have the authority and the right to save those banks which in some cases could mean saving the communities as well.

Chairman ST GERMAIN. Mr. Gaiswinkler, this authority, don't you agree that these are unusual steps that we're being asked to approve of?

Mr. GAISWINKLER. Correct.

Chairman ST GERMAIN. I mean, it's going to change banking in one fell swoop. Now, if you're going to be that radical, that drastic, don't you think we need more than just to say:

"Well, there seem to be some failing banks."

How would you ask us to define a "failing bank" as opposed to a "failed bank"? We must have a definition there because you told me the FDIC has had these powers with respect to mutual savings banks.

So how would we determine what a failing bank is?

Mr. **Gaiswinkler**. I don't know specifically what the definition of that would be. Under current law, there is no definition of "in danger of closing", per se. Mr. Doyle referred to a bank whose capital is less than 1 percent, or something like that; without getting into the details.

Chairman **St Germain**. Do you agree that we should have a definition in the statute of a "failing bank" as opposed to leaving it to the regulators to define it?

Mr. **Gaiswinkler**. Yes, sir.

Chairman **St Germain**. Would you and your organization give us what you feel should be the definition of a "failing bank"?

Mr. **Gaiswinkler**. We'd be happy to supply that. Yes, sir, we would.

Chairman **St Germain**. Now, you and Mr. Doyle intertwine and state that, as far as the IBAA is concerned, it's essential that H.R. 20 be adopted along with this legislation.

Would you please address that requirement by the IBAA as enunciated by Mr. Doyle?

Mr. **Gaiswinkler**. Our members are opposed to the adoption of H.R. 20, as I believe you have heard us testify before. The reason for that is that we believe in removing all geographic barriers to any banking industry functions.

Chairman **St Germain**. H.R. 20 would remove——

Mr. **Gaiswinkler**. I say we believe that. We believe there should be no restrictions on interstate banking.

Chairman **St Germain**. We're talking about H.R. 20, the nonbank bank bill.

Mr. **Gaiswinkler**. Yes, sir.

Chairman **St Germain**. You oppose H.R. 20?

Mr. **Gaiswinkler**. Yes, sir.

Chairman **St Germain**. Why?

Mr. **Gaiswinkler**. Because we feel that anyone should be able to get into banking. Correct?

Chairman **St Germain**. You know that's correct.

Mr. Doyle, how about you addressing Mr. Gaiswinkler's reply? Let's have a little fun.

Mr. **Doyle**. We think that anyone who owns a bank has to fill the responsibilities of owning the bank. They're given certain privileges.

No 1, the safety net of the taxpayers of this country. And if people are going to ask to go into a business that's going to have a safety net that the taxpayer stands behind in order to provide a safe, sound level of confidence that won't allow it to fall apart in troubled times, like we're having now, when we feel they must meet special considerations in the terms and conditions as set forth by Congress, in the policy of what is a bank, who can own a bank and where can they operate? And what are their responsibilities to consumers, that you have represented here at this table today?

We believe very strongly, we believe that's a special privilege. It should not be opened up to just anybody to own a bank.

Chairman St Germain. Now, Mr. Gaiswinkler, you have time for a rebuttal.

Mr. Gaiswinkler. I can't rebut that. He believes that, and I believe the opposite.

Chairman St Germain. You believe you shouldn't have a strong safety net. You believe we shouldn't be concerned about the taxpayer's money.

Mr. Gaiswinkler. Certainly, we should be concerned. Regulators are concerned about that. And they should regulate properly so that the institution they supervise don't get into trouble.

We certainly serve the consumers.

Chairman St Germain. Ms. Livingston, how many institutions that you surveyed refused to cash government checks unless you had an account in that institution?

Ms. Livingston. The sheet was taken, but I believe it was 108 out of 140 some institutions refused to cash government checks for anybody that didn't have an account at that bank.

Chairman St Germain. Have you surveyed your membership, Mr. Gaiswinkler, as to whether or not they cash checks or not?

Mr. Gaiswinkler. No, sir.

Chairman St Germain. Government checks?

Mr. Gaiswinkler. No.

Chairman St Germain. Do you think that the institutions should cash government checks?

Mr. Gaiswinkler. If the proper identification has been presented, certainly.

Chairman St Germain. I assume your institution does that at no charge?

Mr. Gaiswinkler. Yes.

Chairman St Germain. My time has expired, but I'm sure we'll have a little more time with you on the next round.

Mr. Barnard.

Mr. Barnard. Mr. Chairman, I couldn't possibly get into this subject in the 5 minutes allowed to me, so I have no questions.

If I could have equal time with you, then I would get into the questions. [Laughter.]

Chairman St Germain. Mr. Vento.

Mr. Vento. Thank you, Mr. Chairman.

Mr. Gaiswinkler, are you concerned about the fact that we would remove geographic barriers in this case—In other words, liberalizing those barriers—with the fact that some of the institutions that might purchase these failing banks are themselves larger institutions, they're not going to be purchased by smaller institutions, are they?

Mr. Gaiswinkler. No, sir.

Mr. Vento. Eventually, then, as larger institutions are doing this, in other words, they gain a new franchise, a new environment?

Obviously, this is one of the motivations very often. But, eventually, do you think there's any risk that these larger institutions, if they have problems themselves, that the insurance funds themselves might or could sustain an even larger loss?

Mr. **Gaiswinkler**. Certainly, to the extent that those acquiring institutions certainly should be solvent, well-run, well-reserved, and well-managed institutions.

Mr. **Vento**. The largest loss that's occurred to the FDIC is the Continental-Illinois, $4.5 billion. And the fact of the matter is this idea of merger, which starts out to save money, in the end could very well—if you swallow enough bad debt, sometimes you get a stomach ache, don't you?

Mr. **Gaiswinkler**. Yes, sir.

Mr. **Vento**. We have to be very careful. I think this concern is one that most of us share.

We realize that mergers have a place in terms of trying to protect the fund, but it seems to me that some of these changes that are being proposed go to such an extent that they are really seeking another goal, and the goal isn't to protect the fund. The goal is to pursue a different policy path with regard to interstate banking.

Wouldn't you agree that in terms of dealing with the fund that we ought to be dealing with what is best in terms of protecting the insurance fund and providing the right tools rather than trying to change banking policy in the guise of protecting the fund?

Wouldn't you agree it is better to deal with this forthrightly?

Mr. **Gaiswinkler**. I think so, yes. But I am not sure. I am not a regulator, nor have I talked to many of the regulators about this.

I do not think their intent was to change the interstate banking law by this. I think their intent was to protect the fund in case there is not a qualified buyer, or someone who is willing to buy a particular bank, in State.

Mr. **Vento**. I think that that is true.

Can you point out an instance where there has been a problem of not being able to find a buyer? Do you know of any instances?

Mr. **Gaiswinkler**. Not off the top of my head, no.

Mr. **Vento**. Do you think that that has been part of the general discussion?

Mr. **Gaiswinkler**. I am sure there probably has been one.

Mr. **Vento**. Mr. Doyle, you work as an Independent Banker. You are representing the Independent Bankers today.

Has this been a difficulty, where you have not been able to find buyers?

Mr. **Doyle**. I think the regulators find that in certain situations there have been no bidders. But I addressed the fact earlier that the procedure for securing bidders is so faulty that it is easy to understand why there would not be any bidders.

Mr. **Vento**. Are we talking about too high a price maybe that they are trying to protect the fund or asking too much of a price or are eliminating other interstate/intrastate interests? Is that your point?

Mr. **Doyle**. I think there is a combination of issues probably in each case, and each one of them are going to be special, and you have to look into each bank or institution for sale.

But the primary fault that I see, if you have an asset that you want to sell, you have to go about it in an orderly manner, and they don't have an orderly procedure to dispose of the assets that they have taken over.

Mr. **Vento**. One of the problems that I think all of us are troubled by is the interstate franchise right, what the value of that is. In other words, is anyone on this panel aware of any type of modification of that particular value, of the interstate franchise right?

That is not really addressed in the regulators' price, as it were, that it is exactly to protect the fund, is it? I mean it is a giveaway, Mr. Doyle, isn't it?

Mr. **Doyle**. It is a giveaway, but it does extract a price. It is a commodity that is out there for sale that people will pay a premium for. That has been evidenced by what has taken place.

That is why we take such a hard stand that no one should gain from it, a sale such as that, except the fund—no stockholder, no management.

Mr. **Vento**. I notice your question. That is what I am trying to understand. How can you quantify that? Do you think that it is quantifiable; for instance, if a stockholder has stock in a bank that is acquired by an out-of-State institution, that you could somehow quantify that?

Mr. **Doyle**. I think you can quantify it. I think you can quantify it by at least one to one and a half times more book value on any given share of stock. I think it has been at least that high. I am probably very conservative.

Mr. **Vento**. What are you suggesting then, that the extra value that would be attributed to that would go back to the FDIC fund for paying for bad debt they would have to pick up?

Mr. **Doyle**. I am suggesting that if anybody should gain it should be the FDIC only because that is who the taxpayers are standing behind, not anybody else, no management, no shareholders, nor anyone else that has an interest in that bank.

Mr. **Vento**. Don't the other financial institutions sometimes lose, in essence, when the interstate powers are broad and are granted to a new institution as well?

They also and the consumers in that State might be adversely affected.

In other words, you are saying if there is money there, it should be looked at in a different way than what it has been historically, is that correct, Mr. Doyle?

Mr. **Doyle**. I am not sure I follow you.

Mr. **Vento**. Well, in the past, how it has occurred in the past, are you saying we should change that and try to quantify that?

Mr. **Doyle**. I am not saying try to quantify it. I think we ought to prohibit it.

Mr. **Vento**. I think what we have to do is quantify it. You think it is quantifiable; you think that if we could obtain that type of value on it that is possible?

Mr. **Doyle**. There is empirical data out there. We don't have the staff to go over and examine every State where there has been a sale of the institution in the IBAA, but I am sure the FDIC could do that or the Federal Reserve could do that for you, and you could quantify a premium that is paid to enter a new marketplace, particularly by the larger players in the game. They don't see small banks in there.

Mr. **Vento**. Thank you, Mr. Chairman. My time has expired.

Chairman **St Germain**. Mr. Wylie.

Mr. **Wylie**. Mr. Gaiswinkler, I thought your testimony a little while ago was very amazing from this member's standpoint. I am generally for free enterprise and the operation of the free enterprise system, but when you said anyone should be able to get into banking—is that what you said?

Mr. **Gaiswinkler**. To the extent that they are qualified and to the extent that they are financially responsible.

Mr. **Wylie**. What about a gambling casino?

Mr. **Gaiswinkler**. Would they be responsible?

Mr. **Wylie**. They would qualify.

Mr. **Gaiswinkler**. Would they be responsible?

Mr. **Wylie**. All right, let me make a point. There ought to be some regulation.

Mr. **Gaiswinkler**. Yes, sir.

Mr. **Wylie**. If you don't have some regulation, everybody is going to be able to get into the business.

Mr. **Gaiswinkler**. Yes, sir, sorry.

Mr. **Wylie**. All right, we have been having hearings on money laundering, and it is a really bad problem right now.

What about a drug dealer? One must not eliminate the little man.

Mr. **Gaiswinkler**. I will use the word "responsibility" again, sir.

Mr. **Wylie**. You say you are for our bill H.R. 4701, and we are glad to have your support. I know Mr. Doyle doesn't like it.

I think we have a real problem on our hands. We have had a lot of losses in Texas. We have had a lot of losses in Oklahoma.

The regulators—I don't think that the regulators are dumb. They say that there is an emergency situation out there.

The American Bankers Association and the Wall Street Journal, the Washington Post, they all on a daily basis are filled with stories about energy and agricultural banks that are in trouble.

What about that, Mr. Doyle? Do you think there is anything to that?

Mr. **Doyle**. Yes, sir, I certainly do, and you haven't heard us speak out against any safety nets that have some reasonable restrictions on them.

Mr. **Wylie**. Sort of like this bill?

Mr. **Doyle**. There are certain features in the bill that we do not like, those that I outlined.

Mr. **Wylie**. All right. You don't like the $250-million threshold?

Mr. **Doyle**. We think the $500 million is sufficient, particularly if you use the four largest banks in the State.

There are several States right now that have no ability to be assisted under existing law, and by putting in the four largest banks, you do open every single State in the 50 to a procedure whereby the largest banks could secure bidders if they had trouble, and obviously that is what the original intent of the regulators was. They proposed the last bill be handled that way.

Mr. **Wylie**. How many times have they used the current authority?

Mr. **Doyle**. I don't have any idea.

Mr. **Wylie**. Once. They used it in a case in Florida—at least that is what the testimony was—where the Park Bank in St. Petersburg was sold to Chase Manhattan. It was a failed bank. Everyone agreed it was a failed bank.

Mr. **Doyle**. And failed is easy to determine. A failing bank is not quite so easy to determine.

So as you loosen up the definitions that you are dealing with as a regulator, we feel we must be very cautious about that because it is your responsibility to set the policy, not the regulators.

Mr. **Wylie**. You have to help us a little, too, you know.

You say that you don't think that the threshold lowered to $250 million.

How many of your institutions would be brought under the act if it were lowered to $250 million? How many independent bankers, members of the Independent Bankers Association?

Mr. **Doyle**. We have not looked at it on a membership basis. We look upon it as a banking group basis, how many banks would be involved in that, and it doubles the number of banks from approximately 500 to almost 1,000 if you use simply the banking threshold.

If you use the holding company threshold, it numbers in the 3,000's.

Mr. **Wylie**. What parts of the bill do you like? Name some parts of it you like.

Mr. **Doyle**. We like the intention behind the bill. We want to give the regulators where a true situation exists, not one that is at the whim of the regulator, but one that is a situation that can be well-defined and they need assistance in securing buyers, we feel they should be given assistance on that.

But we also feel that there are weaknesses that exist today that could be applied to banks in Texas that need help that are no different than the system that was used for Continental Illinois.

Mr. **Wylie**. Mr. Fox, you said that not one of the 120 banks that failed in 1985 would have qualified under the regulators' proposal, since all were far below the $250 million level. I read the papers every morning. They talk about banks in trouble in Texas and out in Nebraska, Iowa, and members on this committee talk about some of those banks that are having difficulty. The regulators came in, said they had some difficulty, they need some additional authority.

You don't think they need the new emergency authority?

Mr. **Fox**. I don't know what the sizes are of the banks that are in trouble in Texas or in Iowa or Nebraska or elsewhere. I can only look at the size of the banks that were in trouble last year, look at the history, and the banks that failed were very, very small, below the $250-million threshold.

Mr. **Wylie**. So it wouldn't apply to them. Then what is the objection?

Mr. **Fox**. I am not sure who it does apply to, but I think you have to look at the combination of powers that are proposed there.

I am particularly concerned, I think, about the situation that is proposed here of what are called unassisted extraordinary acquisitions. It seems to me that taking that provision and taking it in combination with the reduction of the threshold and, in addition to that, the definition or the ability to acquire failing banks as opposed to failed banks permits the large banks that want to expand interstate to set the agenda for what the acquisitions will be rather than allowing the regulators and the FDIC.

Mr. **Wylie**. Does your argument that none of the 120 banks that failed in 1985 would have qualified anyhow lead logically to the conclusion that we don't need any threshold?

Mr. **Fox**. I think if the intent of this legislation really were to try to do something to help out the agricultural banks and the other banks that have been in trouble the proposal would be no threshold and not a $250-million threshold.

That is why we have questions about what the true intent of the legislation is and what its effect would be.

Mr. **Wylie**. Thank you, Mr. Chairman.

Chairman **St Germain**. Mr. Dreier.

Mr. **Dreier**. Thank you very much, Mr. Chairman.

I would like to pursue a line that the chairman began in his questions at the outset, and that is to Mr. Gaiswinkler.

This memorandum the chairman sent me and all members of the subcommittee describes this legislation as an emergency interstate acquisition amendment.

I, too, am concerned. I agree with almost everything you had to say in your testimony, but I am concerned with the fact that you did not focus at all on the real urgency, which is the real reason behind this.

On page 3, you said as a general proposition the National Council favors the role of geographic barriers to competition. We support the regulators' bill as another step in this direction.

My concern is, yes, it may be another step in this direction, but I don't believe at all the idea behind this legislation was to move us in that direction.

Mr. **Gaiswinkler**. I agree with you. The idea behind the legislation was not to move in that direction.

Mr. **Dreier**. So you wish now that you maybe had focused in your testimony on a few of the emergency problems?

Mr. **Gaiswinkler**. Yes, sir, right.

Mr. **Dreier**. I would like to ask Mr. Doyle, under what kind of situation would you see this bill actually taking place?

You kind of alluded to this point of the $500-million level, but I still am not convinced that you would like to see this power ultimately get into the hands of the regulators at all. Your testimony was so negative.

Mr. **Doyle**. Well, it would be negative, it seems, if one was in favor of removing geographical restrictions to banking expansion, but it was positive from the standpoint that we offered solutions to the problems the regulators say they have.

We feel there is more than one way to skin the cat. They skinned a pretty thick cat at Continental. We are talking about the big ones. We are not talking about the little ones.

With $19 billion still claimed to be in the fund, I can't really see that the small banks of this country are a major threat to the fund, even if we are in tough times. The threat to the fund is from the big guys, the big players in the game, and in every instance in Texas where you talk about a major holding company and the problems they are having, I can point to you out of the 70, or more or less, subsidiary banks that they own there are some well-run, profitable, very marketable assets.

And my point is that if they have trouble in the parent and they need liquidity and they need new capital, sell some of your assets. Don't just come running and say you have got to have structural changes to solve problems.

Mr. **Dreier**. Mr. Doyle, is your real opposition to this legislation the fact that you fear cross-State acquisitions?

Mr. **Doyle**. That I fear cross-State?

Mr. **Dreier**. Is that the real reason for opposing this bill?

Mr. **Doyle**. No, it is not.

In our opinion, if you want to change banking structure, then Congress should debate that. You shouldn't try to hide it under the guise of having trouble with one of our insurance funds.

Mr. **Dreier**. Thank you very much, Mr. Chairman.

Chairman **St Germain**. Mr. Roth.

Mr. **Roth**. Thank you, Mr. Chairman.

Excuse me.

I also had a chance to look at your testimony and follow it. I thought it was well-done.

One of the most brilliant men we ever had serving in our body of the House of Representatives was a man by the name of John Rousselot from California. He always cautioned us to look at the facts.

The question I would have is that with your experience in the rather liberal interstate acquisition rules, what has been the experience of our local communities? Has the authority helped?

Mr. **Gaiswinkler**. I don't follow the question. Are you talking about in Wisconsin?

Mr. **Roth**. Nationwide, but you can address it from the standpoint of Wisconsin if you would like; yes.

Mr. **Gaiswinkler**. In Wisconsin, we've had very liberal savings and loan laws, let's put it that way, and we have had much success. We have had well-reserved, well-run savings and loans. They have been permitted to merge under circumstances where it was not necessarily needed for the well-being of the community, but with this liberal branching and merging powers has emerged a State that has done very well for itself. The New Jersey Savings & Loan has come into Florida and taken over an institution that was in trouble. Now they are solvent. They are serving the community, and there are other interstate bailouts, as we can call them, that have worked out very well.

Mr. **Roth**. So generally, our experience has been favorable?

Mr. **Gaiswinkler**. Yes, sir.

Mr. **Roth**. In your testimony, you weren't, of course, very enthused about the special assessment.

Mr. **Gaiswinkler**. That means about 15 percent of our income per year.

Mr. **Roth**. You had mentioned that because of the special assessment, FSLIC now costs almost twice as much as FDIC insurance. You say that thrifts are going to be opting to hold FDIC insurance, where possible.

My question would be, why haven't we seen more of the healthy thrifts go to FDIC?

Mr. **Gaiswinkler**. Probably because of their access to the Federal home loan bank's long-term borrowing powers.

Mr. **Roth**. In praising FSLIC's recapitalization, you talk about a truly appropriate private sector remedy in your testimony, yet you urge faster phaseout of the special assessment.

Do you see some incongruity there?

Mr. **Gaiswinkler**. We have been promised verbally by the Bank Board that as quickly as they can solve their problems, they will cease the assessment. We agree on the whole concept of our footing the bill, since we caused the problem. What we are saying is that if we are going to foot the bill, then make sure that those funds are used prudently, and as quickly as you can, drop the assessment. If they say it is 5 years, then so be it. We would like to see in the regulation something that says the assessment will phase out over a period of time.

Mr. **Roth**. Thank you. Thank you, Mr. Chairman.

Chairman **St Germain**. Mr. Wortley.

Mr. **Wortley**. Thank you, Mr. Chairman. If I could follow up on Mr. Roth's question regarding the potential flight of thrifts, does the Bank Board have the authority to prohibit withdrawal from FSLIC?

Mr. **Gaiswinkler**. I don't know that answer, sir. Oh, they do not, sir. No, sir; they do not.

Mr. **Wortley**. They do not? But they are, in fact, in some parts of this country prohibiting thrifts from converting.

Under what guise do they do that? If they don't have the authority, how do they pull that stuff?

Mr. **Gaiswinkler**. My counsel advises me, you have to go through a charter change to have that.

Mr. **Wortley**. Let's go on to another question. Not 1 of the 120 commercial banks that failed in 1985, either liquidated or acquired, had assets of more than $250 million? Correct?

Mr. **Fox**. Yes, sir.

Mr. **Wortley**. Isn't this a pretty good argument for totally eliminating the threshold?

Mr. **Fox**. I think if the purpose of the legislation were really to try to help failing or failed agricultural banks, that would be necessary. The fact that that is not proposed is why we believe that the purpose of the legislation is other than what is stated. I am not sure that eliminating the threshold and allowing acquisitions of banks with $20 million or $30 million in assets or even less, will really accomplish much of anything. I don't believe that there is really that great a market for such banks. In many cases, they are located in States that simply aren't regarded as hot targets by the acquirers. Certainly, reducing the threshold to nothing, will make it extraordinarily cheap for any bank that wants to enter those States to do so. That will completely eliminate any interstate barriers, which that State's legislature may have seen fit to adopt and maintain. That could be very intrusive into the State's role and policy over bank acquisitions.

Mr. **Wortley**. You don't think that would be proconsumer?

Mr. **Fox**. I think that is probably the one limited instance where these forced takeovers may in and of themselves benefit consumers, and that is, if the bank is the only bank in the community.

Currently, I believe the FDIC gives special priority to try to maintain those banks. I don't think that necessarily allowing out-of-State acquirers in is going to improve that situation, if the State doesn't want to permit out-of-State acquirers and doesn't see a public benefit in maintaining those banks.

I am not sure that the FDIC is the proper place to place that role and override that State authority. The States have had a year to enact such statutes. I think any State which believes, as a matter of policy, that its ability to keep threatened local banks open is not working under its current law, had had ample opportunity to deal with that.

Most of the States have done so, and it speaks loud and clear, when a State has not done so.

Mr. Wortley. I want to get to Mr. Doyle or I would challenge you on that one. Let me go to Mr. Doyle.

Do you really believe that the goal of saving the FDIC money is so reprehensible, when the alternative seems to be an increased number of liquidations by the FDIC, which means the cost of insurance will go up?

Mr. Doyle. Well——

Mr. Wortley. I don't follow your logic. I would think that increased FDIC premiums would hurt independent banks perhaps a lot more than it would hurt the large banks.

Mr. Doyle. We pay an additional proportionate amount in premiums now because of foreign deposits not being included in premiums. But the situation is this. The marketplace for a bank is the structure in that State where the bank operates. That is where the fire should come from. We want banks to be owned by their local communities as much as is possible. That is our philosophy. We believe in that. We believe it is in the best interests of the community, the consumer and the businessman there to have that type of banking structure.

Now with that given, all we are saying is that we are in favor of a real strong fund. We do not feel that the hands of regulators should be tied to protect the fund, nor do we think that they should use structure where it is not absolutely necessary to protect the fund. It wasn't long ago that the Chairman of the FDIC was saying that we needed to have a few bank failures in this country, that we were overprotecting the banking system. The gentleman was from Alabama, and I heard him personally say that.

Now we have a situation where there are cracks in the foundation of our financial system, and obviously, we are concerned with the number of banks and thrifts that have been in trouble in the last—during the 1980's here, and it has hopefully reached its high point. Now we are trying to find a system to work out of it. I don't think there are panic conditions at work here. I think there are logical, well-thought-out solutions to this problem.

Mr. Wortley. What is your solution?

Mr. Doyle. I tried to mention as many of them as I could. Stabilize the bank, allow the FDIC to assist the stockholders to put more capital into the bank to stabilize it. That is what they did with Continental. Why won't that work with a little bank as well as a big bank? Why do we always have to use it for a big bank?

Mr. **Wortley**. We also took some of the stock in Continental. Are you prepared to let them take the stock?

Mr. **Doyle**. Absolutely. Let them take some of the stock in a small bank. Why does it always work for the big guy and never for us little guys?

Mr. **Wortley**. Ask the regulators.

Mr. **Doyle**. I do.

Mr. **Wortley**. My time is expired.

Chairman **St Germain**. Mr. Bereuter.

Mr. **Bereuter**. Thank you, Mr. Chairman.

Mr. Doyle, I liked your last answer. I have been looking for an answer to that question myself, and I don't think there is a logical answer, but I do think it has to be asked again and again.

I would like to ask you about the proposal that you made.

First of all, I would like to thank all of you for your testimony.

Mr. Doyle, I wanted to ask you about your alternative suggestion that an exemption be provided for the four largest banks in the State, regardless of whether or not they are over that $250 million threshold.

Could you elaborate a bit more as to why you think this is an appropriate approach versus the approach that is in the bill?

Mr. **Doyle**. I think this would cover—we looked into this and it would cover 29 banks in 13 States. It will open up banks of that size, 29 banks in 13 States. There are four States—Montana, North Dakota, West Virginia and Wyoming, which would still not have any flexibility to the regulators, if the largest bank in that State got into trouble. So we feel this would be an opening that would allow every State to be protected under these procedures, if they had a problem and they needed that type of threshold.

Mr. **Bereuter**. Is your proposal then to change the $250 million, or to say that it would be reduced to $250 million, but if we don't have banks of $250 million, then it would go down to the top four banks in the State? Or is that an alternative?

Mr. **Doyle**. That is an alternative to dropping the 250, leaving it at 500. That is an alternative that we would add to the existing law.

Mr. **Bereuter**. In the four States that you mentioned——

Mr. **Doyle**. There are four that are not covered at all: West Virginia, Wyoming, Montana, and North Dakota.

Mr. **Bereuter**. In those instances, you were saying that they have no banks that reach the $250 million threshold, not the $500 million?

Mr. **Doyle**. That is correct. And there are other States that would add additional banks, because there would be a total of 29 banks in 13 States that would be added, that are in that size category.

Mr. **Bereuter**. Do you feel that this alternative proposal would meet the objectives that the sponsors of this bill apparently have?

Mr. **Doyle**. At one time, we felt it would, because we discussed it with the former Chairman of the FDIC, but we don't know the extent of their problems, obviously, and we are not privileged to know that. So I can't answer that. They would have to answer that.

Mr. **Bereuter**. Thank you. Thank you, Mr. Chairman.

Chairman **St Germain**. Mr. Bartlett.

Mr. **Bartlett**. Thank you, Mr. Chairman.

I very much appreciate the testimony of the witnesses today. I appreciate the chairman having these hearings. I understand that we will have some additional hearings later.

As I think each of you know, I welcome Mr. Doyle from Texas, but I have rather reluctantly and skeptically come to the conclusion that, in fact, an additional option for the regulators, for the interstate acquisition of a failing bank holding company on an emergency basis is probably required. I do share some of your conclusions about the regulators' bill, specifically, as to whether there is a need to provide for further in-State acquisition in violation of the State law or preempting State law via a bank holding company that has been acquired by an interstate bank. And I also have some concerns about the absence of priorities in unassisted transaction.

My question, Mr. Doyle, to you would be, first of all, if we were to place some sort of priorities procedure for unassisted transactions, and if we were to either leave or modify the proposal for further in-State acquisition, how far would that go in satisfying your reservations about the bill? Reservations is too soft a word. I apologize.

Mr. **Doyle**. No, that's all right. I think you will find in our testimony that we have not tried to take a real hard-nosed approach on every one of the points. We are willing to try—we want to try to work out a solution to the problem. We just want to be sure they are real problems and that these are the only alternatives remaining. We want to be sure that as we go through the process of trying to dispose of a bank that is in trouble or a thrift that is in trouble, that we don't overlook an opportunity to explore an alternative other than just violating—not violating but overriding—State laws that that State has decided is in its best interest. And that is where we are coming from.

Mr. **Bartlett**. I appreciate that approach, because I know that it is the approach that you have taken in the Independent Banks, both nationally and in Texas, that you intend to resolve the problem and make certain that we have enough options to make sure that we don't have a crisis.

I concur with you. We don't have a crisis. I think it is a matter of providing for options for the regulators just to make certain that we don't make a mistake and that we avoid that.

Let me move on to the definition, because I have a little trouble about how to get there, in terms of definition. In your testimony, you advocated a specific set of criteria within the statute. Let me suggest to you why that troubles me a bit. I read from the definition in the regulators' bill, and while your record is not specific, it nevertheless seems to me to be rather strong, and I wonder if you would tell us where you think it falls down, in terms of the strength of the test. It says this only applies if the bank is "in danger of closing" and the definition of "in danger of closing," is that the bank is not likely to be able to meet the demands of its depositors or pay its obligations and has no reasonable prospect to do so without Federal assistance or the bank has incurred or is likely to incur losses which would deplete all or substantially all of its capital, and there is no reasonable prospect for replenishment.

Other grounds exist under applicable State law for closing the bank. It does seem to me that while that is not as specific percentage test, from the position of this committee, that that is a rather strong test.

Do you think the test is too weak, or do you just simply object to the fact that it is not specific enough?

Mr. **Doyle**. I would say that that paints a pretty dismal picture, no question about it.

Mr. **Bartlett**. It seems to me that a bank that could meet this test, in layman's terms, would be truly in danger.

Mr. **Doyle**. But one of the things we feel is, if you have a specific amount, such as a 1-percent test, then you are dealing with something that is specific as to how close you are to failing. That is where we feel, if they could tighten the language somewhat, to be more specific and not just have the terms that you were quoting—those are subject to interpretation. I realize that they require the full board to vote on it, if there is any question between the State regulator and the Federal Deposit Insurance Corporation, but getting the full board to vote to support moves of the FDIC is not going to be difficult to achieve, for obvious reasons, particularly, you have a disagreement between the State regulator and the FDIC over whether or not that institution is truly failing. And those instances might come up. I think it is something that needs to be thought out before we just simply pass a law that gives them that authority.

Mr. **Bartlett**. My last question, very quickly.

The 48 hours that the State banking supervisor would have under this bill to reject it on the understanding that there's substantial power consultation with the State banking supervisor, your statement would indicate that you would strengthen the role of the State banking supervisor and give him an even greater degree of authority.

Would you provide for an absolute veto, without any kind of override by the Federal Government?

Mr. **Doyle**. As far as an absolute veto, I don't think so because you may have turf battles going on; at the same time, we're losing the taxpayers' interest as far as protecting their interests against the FDIC reserve.

I don't think we should allow that to happen, no. That's why you need specifics. So, indeed, if they do get into a tizzy, then the specifics would take charge.

But, if they wanted to agree on something, then there would be a more liberal interpretation of what is failing so long as there was complete agreement.

But, if there was disagreement, then a specific bottom line definition would then go into place.

Mr. **Bartlett**. Thank you.

Mr. Doyle, I've talked with a large number of your members in my constituency and I find them to be quite reasonable in their approach, similar to your approach. And I appreciate you've been very cooperative.

Chairman **St Germain**. Mr. Vento.

Mr. **Vento**. Thank you, Mr. Chairman.

Mr. Fox, I note that you refer to the amendment that we added on the interstate banking bill in terms of concentration with regard to interstate banking.

One of the exceptions was for troubled or failed institutions. But, if we liberalize this and expand it, I know you think it's a concentration issue, it ought to be a factor with regard to this change.

Is that right?

Mr. **Fox**. The amendment that was approved to H.R. 2707 a year ago certainly was in the context of the then current Garn-St Germain provisions. Our belief is that this bill would so broaden those provisions that that whole issue would need to be revisited.

Again, it's our belief that proposals here really do broaden interstate banking, the availability of interstate acquisitions in a way that poses problems for concentration that weren't present.

Mr. **Vento**. It should be tightened up perhaps even more than it was? We had 1 percent initially. We had proposed a half percent, which would have included 20 of the largest institutions. One percent only excludes about six or seven institutions.

And of course, Mr. Gaiswinkler, what do you think about that? I'm trying to put some sort of concentration on community standards into a liberalized acquisition bill, especially this liberalized acquisition bill.

Mr. **Gaiswinkler**. This is the regulators bill, and I am not familiar with the concentration limits in H.R. 2707.

Mr. **Vento**. You understand what a concentration is.

Mr. **Gaiswinkler**. Yes, I understand it. But I feel that the regulators can, within the working powers, handle that aspect.

Mr. **Vento**. Do you think it needs expanded antitrust? What about the antitrust arguments in terms of concentration? Do you favor anything in terms of antitrust tests?

Mr. **Gaiswinkler**. Yes, to the extent that there should be an overload of their powers.

Mr. **Vento**. Mr. Doyle, your organization was very supportive of that in the initial interstate bill. How do you feel about it in this bill? If we're going to do this, do you think we ought to have some concentration limits?

Mr. **Doyle**. Yes, sir, we do. And we would agree with Senator Proxmire's point on that, the 1 percent that he suggested.

Mr. **Vento**. Senator Proxmire is a great leader from the State of Wisconsin, but he's following the gentlemen from Minnesota and Iowa in this. I appreciate it.

Thank you, Mr. Chairman.

Chairman **St Germain**. Ms. Kaptur.

Ms. **Kaptur**. Mr. Chairman, I apologize. I had to go out and take a phone call, so I haven't followed the line of questioning. I'll pass for the moment.

Chairman **St Germain**. Mr. Doyle, you suggest that we consider a number of changes in the definition of "failing." You feel that could slow the ability of Federal ensuring and supervising agencies to respond to a failing bank.

Has the idea incorporated the need to be able, or do they feel that we should have incorporated the need to be able to act quickly in situations where the supervisory agencies feel that quick action is absolutely essential, and that there could be a situation where that would occur?

And, if so, would you favor some emergency section that would say yes, in certain situations, you have to act quickly? And will not have this stretched time procedure?

Mr. DOYLE. Yes, Mr. Chairman. We have not had time to really spend a lot of time in our committee structure evaluating that. But I think what we were trying to say, maybe not so well, but what we were trying to say:

Under the stabilizing authority of the FDIC, we feel that they should be given almost unlimited ability to stabilize an emergency situation in order to then allow an orderly process to take place, securing the permanent private sector stabilization of the ownership of the institution; and thereby first following the existing structure and offering those buyers in that marketplace a chance to acquire the institution.

And then, if there are none, proceed with the additional buyers that could be found outside the existing structure.

We strongly support allowing them emergency powers to stabilize a bank. In our opinion, it's not healthy for any of us to have one of our financial institutions pose a threat to the structure.

It would be foolhardy for us to take that position.

Chairman ST GERMAIN. Mr. Carper.

Mr. CARPER. Thank you, Mr. Chairman.

As I've indicated to the chairman of the full committee, I'm giving some thought, when we get into the full committee markup, offering as an amendment to this bill a modified provision of the Examination Improvement Act, which Representative Lundine and I, along with about three-fourths of the members of this committee, have introduced and cosponsored.

We are concerned that, at a time when we need to really enhance the quality of the examination process, we may unwittingly, through Gramm-Rudman, be about to weaken it.

At a time when I think most of us agree that we need to hire more examiners, we may ultimately end up hiring fewer examiners.

At a time when we need to be able to pay a bit more to them in salary in order to reduce turnover, we may be faced with a situation where we're offering them less.

An increasing turnover. At a time when we should be enhancing their training, we may find we have less dollars to pay for training at all.

The revenue and the fees which are collected by these regulators, for the most part, are for special funds, apart from the General Treasury revenues. And the moneys that are, for example, not used by the FDIC are simply returned not to the Treasury, but rather to the institutions that have been examined.

I would welcome from several of you some comments on whether we should be considering that approach as an adjunct to this bill.

Let me first turn to Mr. Doyle and see if he has any thoughts on that.

Mr. DOYLE. I certainly do. I agree wholeheartedly with what you just stated. I certainly also agree with Chairman Seidman that the FDIC should not be subject to OMB.

It's probably the worst time for them, for the examining authorities—both from the Fed as well as the Comptroller's Office and the FDIC—to be faced with a situation where they were planning, as you said, to add additional talent to their examining force.

We are opposed to increasing regulations, but we are certainly in favor of increasing the quality of supervision.

We've been embarrassed in the banking industry by the fact that supervision has not been always able to sort out managements of banks that shouldn't have been there, and owners of banks that shouldn't have been there.

This even underlines, I think, our position about who should own a bank. We depend on quality supervision to weed out people who will abuse their privileges as bankers in this country.

And it's a mistake when we allow a situation, as we have today, when we're trying to cut back, that we've cut back in the wrong places. Supervision is not the place to cut back.

We welcome professional supervision, and it's too bad we haven't been able to have it.

Mr. CARPER. Mr. Gaiswinkler, would you care to add your comments?

Mr. GAISWINKLER. I agree 100 percent with what he just said. To the extent we have transferred our examination staff from the Federal Home Loan Bank Board to the local banks, where they are paid not substantially more money, but they get a decent increase, the quality of the examiners has increased substantially; it has just helped us immensely.

I sympathize with the problem that you're facing with Gramm-Rudman cuts. We pick up the entire bill anyway.

Mr. CARPER. I think we have a vote at this time. I'd just welcome Mr. Fox and Ms. Livingston to the committee as well. I don't know if they'd care to comment at all.

Chairman ST GERMAIN. Mr. Gaiswinkler, everybody agrees—well, not everybody, but quite a few people agree—that this is not the time to cut back on supervision regulations and supervised regulatory agencies.

But I think Mr. Carper's question was not whether or not you agreed that we should continue good supervision and regulations, but rather he was asking for an evaluation of the legislation that he's cosponsoring with Mr. Lundine and a number of other Members.

If you're prepared to comment on that now, fine. But, very frankly, I doubt that you are because you didn't come here for that purpose.

I think what Mr. Carper probably would like would be a comment for the record.

Mr. CARPER. A followup comment for the record, Mr. Chairman. And I really appreciate it.

Chairman ST GERMAIN. It's tough for the witnesses to ask them to comment on bills if they haven't sat down and reviewed them in preparation for this hearing.

So I think we should give them an opportunity to answer for the record.

Mr. GAISWINKLER. You were addressing me, Mr. Chairman?

Chairman ST GERMAIN. Both you and Mr. Doyle.

Mr. **Gaiswinkler**. Yes.

Chairman **St Germain**. If you can respond on behalf of the organizations.

Mr. Doyle, you are not only president of the IBAA, but you are also a resident of the great State of Texas. Your testimony indicates that you are not in total opposition to 4701, but you ask for a number of changes. And you suggest that, in many instances—at least, this is my interpretation of your testimony—in many instances, that some of the assets of holding companies, where they might have one or two institutions that are real profitable institutions, could be sold off to help the problem institutions.

It's no secret, it's been in the press, that one of the reasons for this legislation and one of the reasons that the regulators acted, frankly, with dispatch here, the likes of which I haven't seen in many days, to come up with this legislation, is that there's a problem beyond the small banks having an overabundance of nonperforming loans, and many other problems.

But, in addition, that there were some large institutions in Texas that are or may well in need of assistance in the very near future.

Do you agree or disagree with that?

Mr. **Doyle**. I would agree, Mr. Chairman. For that reason, I think it would have been better to have focused on leaving the threshold at a higher level, because I perceive the same as you, that that's where the problem is, and not with the lower end of the threshold, or the increasingly large number of banks that would be eligible.

Chairman **St Germain**. That being the case, in your opinion, as the President of the IBAA and a member of the Texas banking fraternity, so to speak, do you feel that the situation in Texas, for example, demands emergency legislation to amend the takeover provisions of Garn-St Germain?

And I'm not asking you to cross every "t" and dot every "i" in 4701. But, the overall thrust of 4701, do you think that the situation there warrants this action?

Mr. **Doyle**. Mr. Chairman, that's a little difficult for me to answer because, even though I am from Texas—a Texas banker—and I'm aware some of the banks' problems that I read about, like you do, in the newspaper, I am also a member of the Federal Reserve Board in Dallas.

And I don't know if it would be appropriate for me to comment on just how serious the problem is.

Chairman **St Germain**. I'm not asking you to comment on how serious it is, but rather on whether or not there's a situation out there that warrants expeditious actions of a type similar to that which is contained in 4701.

Mr. **Doyle**. To my knowledge, I don't know that it warrants everything that's asked for in the bill. I do not think it warrants everything that's asked for in the bill.

Chairman **St Germain**. I'm not going to press you any further because of the fact that you've probably got some conflicts that concern you.

We nonetheless thank you for your forthrightness.

Mr. Doyle, Mr. Gaiswinkler, Mr. Fox and Ms. Livingston, we're going to end the hearing at this point. We'll be submitting additional questions in writing to all four of you. We'd like your responses in a timely fashion because, as you know, there's going to be a lot of pressure on the committee to move in an expeditious manner.

For that reason, we would like to have the record as complete as possible, and as soon as possible.

Thank you.

The subcommittee stands in recess until our next hearing, which I'm told by staff will be on Tuesday next. Tuesday afternoon next.

[Whereupon, at 11:55 a.m., the subcommittee recessed, to reconvene on Tuesday, May 6, 1986.]

[Letters of invitation to witnesses and prepared statements of this day's hearing follow in the appendix.]

APPENDIX

FERNAND J. ST GERMAIN, RHODE ISLAND, CHAIRMAN
FRANK ANNUNZIO, ILLINOIS
CARROLL HUBBARD, JR., KENTUCKY
[illegible] BARNARD, JR., GEORGIA
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MARGE ROUKEMA, NEW JERSEY
DOUG BEREUTER, NEBRASKA
STEVE BARTLETT, TEXAS
TOBY ROTH, WISCONSIN

April 28, 1986

Mr. Robert S. Gaiswinkler
Vice Chairman
National Council of Savings Institutions
1101 - 15th Street, N.W., Suite 400
Washington, D.C. 20005

Dear Mr. Gaiswinkler:

To assist this Subcommittee in the discharge of its responsibilities, you are requested to appear on Thursday, May 1, 1986, in Room 2128 Rayburn House Office Building at 10:00 a.m., to provide testimony to the Subcommittee on proposed legislation by the Federal regulatory agencies on emergency interstate acquisitions and related matters. More specifically, you are asked to testify on the Financial Institutions Emergency Acquisitions Amendments of 1986, the legislation proposed by the Federal regulatory agencies, and on current proposals for the recapitalization of the FSLIC and enhancement of the supervisory authority of the Federal Home Loan Bank Board.

In accordance with Committee Rules, please deliver 175 copies of your prepared statement to Room B303 Rayburn House Office Building twenty-four hours in advance of your scheduled appearance. Your statement in its entirety will be included in the hearing record and, if delivered as requested, the statement will be made available to all Subcommittee Members in advance of the hearing. To provide all Subcommittee Members with sufficient time for questioning, the oral presentation of your prepared statement must be limited to ten minutes.

Sincerely,

Fernand J. St Germain

Fernand J. St Germain
Chairman

FJStG:dTv

FERNAND J. ST GERMAIN, RHODE ISLAND, Chairman
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NINETY-NINTH CONGRESS
ROOM B-303 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6051

April 28, 1986

Mr. Charles T. Doyle, President
Independent Bankers Association of America
1 Thomas Circle, Suite 950
Washington, D.C. 20005

Dear Mr. Doyle:

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Sincerely,

Fernand J. St Germain
Fernand J. St Germain
Chairman

FJStG:dTv

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TOBY ROTH, WISCONSIN

April 28, 1986

Mr. Alan Fox
Legislative Representative
Consumer Federation of America
1424 - 16th Street, N.W. Suite 604
Washington, D.C. 20036

Dear Mr. Fox:

To assist this Subcommittee in the discharge of its responsibilities, you are requested to appear on Thursday, May 1, 1986, in Room 2128 Rayburn House Office Building at 10:00 a.m., to provide testimony to the Subcommittee on proposed legislation by the Federal regulatory agencies on emergency interstate acquisitions. More specifically, you are asked to testify on the Financial Institutions Emergency Acquisitions Amendments of 1986, the legislation proposed by the Federal regulatory agencies, and related matters.

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Sincerely,

Fernand J St Germain
Chairman

FJStG:dTv

TESTIMONY

of

Charles T. Doyle
Chief Executive Officer
Gulf National Bank
Texas City, Texas

and

President

INDEPENDENT BANKERS ASSOCIATION OF AMERICA

on the

Financial Institutions Emergency Acquisitions
Amendments of 1986

Before the
Subcommittee on Financial Institutions
House Committee on Banking, Finance and Urban Affairs

Washington, D.C.

May 1, 1986
2128 Rayburn House Office Bldg.

My name is Charles T. Doyle and I am Chief Executive Officer of the Gulf National Bank in Texas City, Texas. I am also President of the Independent Bankers Association of America. IBAA is the national trade association of community banks, representing some 7,400 small and medium-sized banks throughout the United States.

Mr. Chairman, I appreciate the opportunity to appear before your Committee and present our views on the regulators' dramatically liberalized emergency interstate takeover proposals. I wholeheartedly agree with your recent characterization of these proposals as "interstate banking without the trigger." If they are adopted, control of the banking industry will become vested in fewer and fewer hands and states will have little control over their own financial destiny.

Before I discuss the specifics of the regulators' bill, I must strongly emphasize our view that the issues of emergency interstate takeovers and the nonbank bank loophole must be linked. The existence of the loophole is inconsistent with the aims of the emergency takeover provisions; unless the loophole is closed, potential acquirers will be able to open up a brand new nonbank bank instead of buying a troubled institution. The nonbank bank option would permit the out-of- state bank to make a fresh start without the problem loan and management difficulties left over in the troubled bank. If this is true, the market for troubled institutions could dry up. Therefore, Congress should not extend, much less liberalize, the emergency authorities unless it closes the nonbank bank loophole at the same time.

A key motivating factor in the regulators' proposals is a desire to save money for the insurance funds by increasing the number of buyers for troubled institutions. This is certainly a worthy goal. However, this should not be your only goal. Diversity, the separation of banking and commerce, and local control of financial power have long been cornerstones of the country's financial and political system. In fact, the deposit insurance funds were established to make it possible for thousands of local institutions to remain strong participants in the economic lives of their communities. We urge the Congress to be sensitive to this goal as it considers proposals like the emergency takeover bill which would enormously increase the power of regulatory officials in Washington.

The Threshold

While we recognize that some liberalization of the Garn-St Germain authorities may be necessary, the regulators' proposals go way too far. We oppose the arbitrary dropping of the takeover threshold from $500 to $250 million. This change alone would nearly double the number of banks exposed to interstate takeover from just over 500 to just under 1000. We have seen no facts that would justify this wholesale addition to the interstate auction block.

When similar proposals were made last year, we indicated that we preferred that Congress retain the $500 million threshold and provide an exemption for the four largest banks in those states with fewer than four banks over the threshold. Under this approach, there would be at least four banks in every state of the union that could be acquired by an out-of-state organization if there were no in-state buyer. It would avoid the problem posed by a state where one of its largest banks is troubled, and yet there is no in-state buyer large enough to take it over. However, its effect would be limited to states with very few, or no, banks over the threshold. On the other hand, the regulators' blanket proposal would affect all states, even those where there are ample numbers of potential in-state acquirers.

I understand that the regulators have not rejected this kind of solution; they have simply proposed a different one. We hope your Committee will adopt the substitute provision we have suggested.

"In Danger of Closing"

The regulators have also proposed that the interstate takeover provisions be extended to banks "in danger of closing." Current law applies only to "closed" banks, which provides a significant safeguard against using this authority in cases where it is not absolutely necessary.

If this safeguard is to be weakened in order to save money for the FDIC, other protections must be added. The current regulators' proposal lacks such protections. It simply says that a bank or bank holding company may be sold off interstate if it is "in danger of closing." Though the bill includes a definition of this phrase, it is unacceptably vague. At a minimum, Congress should set specific standards for determining that a bank is in danger of closing, making clear that a bank's capital must have fallen below one percent before it can be considered "in danger of closing."

Another important safeguard against overuse of the interstate takeover authority involves the role of state officials. We agree with the Conference of State Bank Supervisors and the American Bankers Association that any acquisition under the liberalized authority not take place unless the state banking regulator in the target bank's home state does not object. We also believe that the target state's governor should certify that the problem cannot be handled within the state before federal officials arrange an interstate takeover. These protections would help counterbalance the increase in the number of banks exposed to interstate takeover under the change in the size of banks eligible and the proposed addition of "failing" banks to those now covered. Our dual banking system must be preserved even when we face a crisis that requires emergency takeover provisions by our Federal Deposit Insurance Corporation.

We also believe that stockholders in failing banks should be discouraged from seeking an interstate solution to their problems. In those cases there is little, if any, intrinsic value left in the bank; the only value to an out-of-state acquirer would be the interstate franchise right. Therefore, we recommend that stockholders who agree to sell their banks to an out-of-state buyer receive no compensation.

Another way to encourage in-state solutions would be to permit in-state bidders to rebid if their initial bid falls within 20% or $20 million of the lowest bid in the initial round. Comparable figures under current law are 15% and $15 million.

One serious problem with the current bidding procedure is that under current authority the FDIC must conduct the process overnight, or, at best, over a weekend. This does not give most medium-sized potential acquirers enough time to properly evaluate the failing bank and make a prudent bid. Money center banks, on the other hand, can well afford to take the risks, especially if they are bidding for a valuable interstate franchise. This inequity should be addressed by giving the FDIC the conservatorship, or bridge bank, authority that it has requested. That would permit the agency to operate a bank for a limited period and allow for a more orderly bidding procedure.

One feature of the operation of the emergency takeover law has been the dominance of the money center banks. Time after time they have extended their reach by acquiring institutions in key states. We recommend that any extension of the emergency provisions include concentration limits so that the very largest banking organizations will not be able to acquire even more dominance. This would permit the large second tier of institutions to participate. These institutions are still rather large, but lack the market dominance enjoyed by the money center banks.

Holding Companies

The regulators' bill also puts bank holding companies on the interstate auction block if at least 33% of a holding company's banks are in danger of closing and total $250 million or more. Current law applies only to individual banks. The regulators' proposal would expose almost three thousand banks and over 500 holding companies to interstate takeover and provide out-of-state buyers with vehicles for dramatic expansion within target states. We oppose this proposal.

We do not believe that our concerns are outweighed by the difficulties of selling holding companies as individual parts. In fact, we believe that the advantages of selling parts of holding companies, or bank subsidiaries in cases of troubled individual banks, are compelling. A holding company's more valuable subsidiaries could be sold to raise capital for the company. This Committee is well aware of a recent precedent for this procedure when the Chrysler Corporation sold its profitable tank division and used the capital to bolster its main auto manufacturing business. Chrysler did indeed shrink, but that was the price it paid for its federal loan guarantee.

If Congress is persuaded that it must expose holding companies to takeover, it should not adopt the very liberal tests provided in the regulators' bill. We remain unconvinced that these low asset tests are necessary or desirable. It may well be a case of regulators asking for more than they ever hope to receive. Instead, if Congress approves the acquisition of holding companies, it should adopt the $500 million threshold and require that at least 65% of the holding company's bank assets have failed, rather than the 33% standard that the regulators have proposed. Of course, the safeguards we outlined earlier in this testimony should also apply in these cases.

Expansion Rights

Finally, the bill would grant an out-of-state acquirer the same expansion rights as an in-state holding company would have in the target state's three largest metropolitan areas. This would undermine state banking laws, such as those in Texas, that limit expansion to holding companies. This provision completes the undercutting of state control imposed by the other provisions of the regulators' proposal. This is unnecessary and we hope it will be eliminated.

Thrift Acquisitions

We are also concerned about the provision in current law which permits "any company" to buy a failing thrift. Though this authority has not been acknowledged as a major feature of the law, as long as it remains, it is a threat to the separation of banking and commerce and inconsistent with closing the nonbank bank loophole. Our concern here is that national firms--especially retail companies--will purchase existing banks or thrifts, transform them into nonbank banks, and begin accepting insured deposits nationwide. We hope this possibility can be eliminated by removing the "any company" language in the emergency takeover provisions and by closing the nonbank bank loophole.

I hope these comments are helpful as you consider any further extension and modifications to the authorities of the Garn-St Germain Act. We, of course, look forward to working with you on these important matters.

Statement of

Robert S. Gaiswinkler
on behalf of the
National Council of Savings Institutions

before the

Subcommittee on Financial Institutions Supervision,
Regulation and Insurance
of the
Committee on Banking, Finance and Urban Affairs
U. S. House of Representatives

on

EMERGENCY INTERSTATE ACQUISITION AUTHORITY

FSLIC RECAPITALIZATION

AND

INCREASED FHLBB SUPERVISORY AUTHORITY

Room 2128 Rayburn House Office Building
May 1, 1986
10:00 a.m.

Mr. Chairman and Members of the Subcommittee, my name is Robert S. Gaiswinkler, president, National Savings and Loan Association, Milwaukee, Wisconsin, and I am appearing today in my capacity as vice chairman of the National Council of Savings Institutions. We very much appreciate the invitation to testify on these regulatory matters of critical importance to ensuring the continued stability of our depository system. The National Council represents approximately 600 savings banks and savings and loan associations with total assets in excess of $450 billion; our members include both FDIC- and FSLIC-insured thrift institutions.

We applaud your responsiveness to the expressed concerns of the federal supervisory agencies for statutory changes to the emergency interstate acquisition authority originally enacted as Title I of the Garn-St Germain Act of 1982. Just recently this authority was extended for another 90 days (through July 15, 1986), and the modifications now being suggested are designed to grant the agencies additional leeway in arranging interstate takeovers of FDIC-insured institutions. The changes would apply to both savings banks and commercial banks, but I am glad to report that all FDIC-insured savings banks are operating at a profit at this time, and we look forward to a record earnings year for these institutions in 1986.

We are especially pleased that these hearings also include the possible modifications to federal law necessary to implement the FSLIC recapitalization plan which has been approved by the Cabinet Council on Economic Policy and is now in the final stages of preparation at the Federal Home Loan Bank Board. Under this plan, additional funding would be made available to the FSLIC through capital contributions made by the 12 Federal

Home Loan Banks. Since the stock of these banks is owned entirely by individual thrift institutions, the recapitalization plan is truly, and appropriately, a private sector remedy.

The National Council supports both the expanded interstate acquisition authority and the FSLIC recapitalization plan. This committee may be assured that we are prepared to do everything we can to ensure prompt enactment of the enabling legislation necessary for both proposals to go forward.

You have also requested our views on a third subject, namely increased supervisory authority for the Federal Home Loan Bank Board. Two proposals along this line have already been introduced, and we understand the Bank Board may be submitting some additional recommendations in this area. In our view, both these bills (H.R. 1680 and H.R. 2444) raise a number of troublesome questions from the standpoint of substantive law and administrative practice. Moreover, these bills do not appear to carry the degree of immediacy that accompanies the other proposals under discussion today.

EMERGENCY ACQUISITION AUTHORITY

By letter dated April 8, 1986 to the Chairmen of both the House and Senate Banking Committees, the federal bank regulatory agencies submitted proposed legislation liberalizing the emergency acquisition provisions of the Garn-St Germain Act of 1982. The proposal encountered opposition in some quarters on grounds that it would allow out-of-state banks to enter states that they would otherwise be precluded from, and then to branch within that state or its regional compact on the same terms as local institutions. The more recent amendatory language, transmitted on April 23, 1986 by FDIC Chairman L. William Seidman and Fed Chairman Paul Volcker, attempts to address this issue by limiting the out-of-state bank holding company to three additional acquisitions to be located in the three largest cities or metropolitan areas into which the acquired bank could enter.

As a general proposition the National Council favors the removal of geographic barriers to competition in banking, and we support the regulators' bill as another step in this direction. The agencies have a well-documented record of prudent and effective use of these emergency interstate provisions since their enactment in 1982. On the basis of this proven track record we see no reason why these powers should not be expanded to accommodate current strains among depository institutions in those states adversely impacted by energy and agricultural conditions.

The modification with respect to post-acquisition branching rights strikes us as a sensible compromise between deference to state branching laws and the need for the federal authorities to encourage out-of-state bids for failing institutions. These amendments would also institute a rough symmetry between the interstate acquisition rules applicable to FDIC-insured banks and those applicable to FSLIC-insured institutions under the policy change adopted by the FHLBB on April 24, 1986. That change would allow any company acquiring a failing thrift to branch or otherwise enter three additional states.

The second major change contained in the regulators' bill would reduce the asset size of commercial banks eligible to be acquired under the Garn-St Germain provisions from $500 million to $250 million. There presently is no asset size criteria in the comparable statutory provisions applicable to thrift institutions and we see no compelling reason to continue this statutory disparity. This different treatment insofar as arranging interstate acquisitions of failing institutions is especially puzzling in light of the fact that the average savings institution has $355 million in insured deposits while commercial banks average just slightly over $100 million in insured deposits.

Eliminating the $500 million threshold rather than simply reducing the figure in current law by 50 per cent would also render unnecessary the complicated formula in Section (3)(A)(ii) of the proposed legislation for handling holding companies whose bank subsidiaries do not have $250 million in assets on an individual basis. However, I would stress that we raise this merely as a point of comparison, and if the $250 million threshold constitutes an acceptable compromise, we would certainly support it as a means of facilitating the enactment of the other provisions necessary to bring the authority of the bank regulators abreast of the size and nature of the current supervisory caseload.

The third suggested change would allow the regulators to come to the aid of a bank that is "in danger of closing" as opposed to the requirement in current law that speaks of a "closed" bank. I would note that the FDIC already has this authority with regard to mutual savings banks, and again the record shows that this administrative discretion has been used both sparingly and prudently. In addition, the term "in danger of closing" would be defined for the first time by prescribing certain specific statutory criteria such as the inability to meet demands for withdrawals or a substantial depletion of capital.

In recent years we have seen numerous instances where quicker action in arranging takeovers would have significantly reduced the eventual resolution costs involved in problem cases. This is particularly true if an institution is undergoing a so-called silent run as a result of press reports or other circumstances. The proposed change would permit the FDIC to act more promptly and would therefore appear to represent a significant improvement in the supervisory tools available to the FDIC to conserve its resources.

As a final comment on this aspect of today's hearing I would like to suggest that interstate acquisitions are only one part of the answer to the current problems facing the industry and the federal financial regulators. An interstate presence is certainly a significant inducement to growth-oriented institutions to participate in the bidding process and thereby reduce the costs to the deposit insurance agencies. However, deposit-taking is only one aspect of doing business in today's financial services marketplace, and we cannot lose sight of the need to return at some point to the question of expanding the product side of the franchise for both banks and thrift institutions.

FSLIC RECAPITALIZATION

One year ago the National Council established a Task Force on Alternatives to Deregulation, with the principal mission of developing recommendations for coping with the deteriorating condition of FSLIC's finances. We are pleased to note that several of the Task Force's recommendations have already been instituted by the FHLBB. These include enhanced field supervision through the transfer of examiners to the District Banks, and the establishment of a separate corporation to dispose of real estate acquired as a result of federal supervisory actions.

It is too early to evaluate fully the series of regulatory proposals released by the FHLBB last week, but the call for increased capital, as measured by Generally Accepted Accounting Principles (GAAP), is an important proposal that the Council will be studying carefully in the months ahead. Relating these higher capital requirements to the risks posed by individual institutions, as the FHLBB has now proposed, was deemed by the Task Force to be one of the most critical regulatory improvements that the Bank Board could take within its current statutory authority. Assigning risk criteria that are objective and easily administered will be admittedly difficult, but we look forward to working with the FHLBB in the development of final regulations instituting variable capital requirements.

It is frequently said that the capital of individual institutions is the first line of defense for the federal deposit insurance agencies and this is true on both a micro- and macro-basis. It is precisely for this reason that we remain gravely concerned over the continuation of the FSLIC special assessment since its bottom-line impact is to transfer financial resources from the private sector to a governmental agency, and to penalize healthy institutions in order to deal with FSLIC's problem cases. At an annualized rate of 1/8 of 1 per cent, the special assessment amounts to $1 billion per year, or roughly one-fifth of the 1985 after-tax profits of all FSLIC-insured institutions.

Because the special assessment represents a serious financial drain on the profitability of healthy institutions, many of which are publicly traded companies whose shareholders rightfully expect management to maximize their return on equity, it is imperative that it be ended as soon as possible. Under the terms of the plan being developed by the Treasury Department and the FHLBB, the special assessment would reportedly be phased out over a period of five years or so. Five years strikes us as too long a phase-out period, but otherwise we support the broad outline of the Treasury plan and compliment Under Secretary George Gould for the time, effort and negotiating skill he has put into the effort.

The proposal would essentially tap the resources of the Federal Home Loan Banks by transferring their surplus capital of approximately $2 billion to a new FSLIC Financing Facility. The facility would use this capital base to borrow an estimated $10 billion in the capital markets and the debt would be serviced through future FSLIC assessments and other income. As funding by the District Banks is phased in, the special assessment would be phased out, but, as mentioned, the key to making this work from the standpoint of insured institutions is the scheduled phase-out of the special assessment.

In February of last year the Council was the first to suggest that the resources of the Federal Home Loan Banks be utilized as part of the solution to the FSLIC problem. In testimony before Congress we stated:

> "We all realize that there are a great number of weak thrift institutions but ... we also know that there are many ways of resolving these problem cases short of direct payout by FSLIC. Given this, the real issue before us is by whom and through what means will the FSLIC acquire the funds it needs to handle the near term problem cases. What has been proposed by the agency are alternative ways for the thrift industry to pay all the liquidation costs of its weakest members by a special assessment, by an increase in annual premiums, or by reduced earnings in the future.
>
> "We suggest that there are other alternatives which could be employed either alone or in conjunction with one of the above solutions. The most obvious and most readily implemented is for the FSLIC to borrow what it needs by establishing a standby line of credit with the Federal Home Loan Banks. The banks currently hold capital amounting to over $8 billion. They may be better able to carry the short term burden than are the individual thrift institutions. We recognize that the Federal Home Loan Banks are owned by the thrifts and that this idea would still reflect a cost to the industry; but, this may be an easier way to bear the burden."*

Unfortunately, this suggestion was not favorably received by either the FHLBB or the individual banks when it was made last February. In the interim, valuable time has been lost and the number of problem cases requiring

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* Hrgs. on Federal Regulation of Direct Investments by Savings and Loans and Banks; and Condition of the Federal Deposit Insurance Funds before the Subc. on Commerce, Consumer and Monetary Affairs of the H. Comm. on Gov. Operations, February 25, 1985, p. 169.

"real money" solutions continue to grow.** We therefore urge that the Congress act as promptly as possible on the legislative changes deemed necessary for the Bank Board to implement the planned participation by the District Banks.

A definitive and near-term date for the elimination of the special assessment is not just a matter of critical importance to FSLIC-insured institutions, but it is essential to the long-term viability of the FSLIC. It now costs approximately twice as much for FSLIC as opposed to FDIC insurance, and this disparity constitutes a major competitive disadvantage to healthy thrifts. Already there are some market indications that thrifts are opting for FDIC insurance where available, and if this were to become a trend it would be very ominous indeed. This is why the special assessment must be ended as soon as possible.

A second major issue in the FSLIC recapitalization plan concerns the contribution by those District Banks (primarily Boston and New York), which have a high proportion of FDIC-insured members. There seems to be general agreement among all the interested parties that since these FDIC-insured thrifts share proportionately in the ownership of the District Banks, but are not insured by the FSLIC, their role in contributing to the FSLIC recapitalization should be somewhat less. To accommodate this, we understand that the plan will include a formula whereby District Banks will contribute to the FSLIC recapitalization in proportion to the percentage of FSLIC-insured deposits in the District. The National Council strongly supports this feature of the recapitalization plan.

** There are now 40 institutions operating under the Management Consignment Program with total assets in excess of $22 billion.

INCREASED SUPERVISORY AUTHORITY

The Federal Home Loan Bank Board has developed two legislative proposals which have been introduced, by request, by Chairman St Germain and Mr. Wylie. The bills are H.R. 1680 (March 21, 1985) and H.R. 2444 (May 9, 1985). These bills are designed primarily to strengthen the enforcement tools currently available to the agency, but in both cases the bills go beyond supervisory matters.

The major features of H.R. 1680 are as follows:

1. Authority for the Board to declare certain types of accounts, e.g., brokered deposits ineligible for insurance.
2. Authorization of an additional insurance premium on the exercise of state-chartered powers by federally insured institutions.
3. Expansion of the conditions under which a cease and desist order may be issued to include circumstances such as inadequate or inaccurate recordkeeping by insured institutions.
4. Prohibition on savings and loan holding companies from affiliating with full service securities firms.
5. Requiring that all FSLIC-insured institutions hold 60% of their assets in mortgages or housing-related investments.
6. Authority for federal associations to offer demand deposits and business NOW accounts.

H.R. 2444 has some overlap with H.R. 1680 and its principal provisions include:

1. Authorization for the Bank Board to deny an insurance of accounts application when it finds that "there is no necessity for such applicant institution in the community to be served."
2. Making it easier to deny insurance of accounts to, or delay processing of applications on, de novos where the FSLIC determines that there will be inadequate examination or supervision at the state or federal level.

3. Changing the priorities in receiverships so that the FSLIC obtains reimbursement for all costs of paying insured depositors before other general creditors get paid.

4. Eliminating the bidding priority provisions contained in the Garn-St Germain Act with respect to arranging interstate acquisition of failing institutions.

5. Limiting state-chartered institutions to the powers of (a) federals, (b) multiple S&L holding companies, and (c) such other powers as the Corporation may approve as a proper incident to the operations of an insured institution.

As can be seen from these brief summaries, both H.R. 1680 and H.R. 2444 are far-reaching legislative proposals containing some provisions that are quite controversial, for example the federal override of state powers and the so-called "thriftness" test. They also include some beneficial provisions such as enhanced third-party payment powers for thrift institutions. In between these two extremes are numerous technical and other noncontroversial changes to the operating powers of the FHLBB and/or FSLIC. Given the short time frame which federal regulatory agencies have set forth for addressing the serious financial situation confronting the FSLIC and the FDIC, we do not believe it would be feasible to work through the many changes that would be needed in these two bills in order to produce a legislative package that could garner the necessary support to move through the Congress in a timely manner.

CONCLUSION

In closing, Mr. Chairman and Members of the Committee, I would like to emphasize that the National Council supports the proposed legislation facilitating the interstate acquisition of failing banks as well as the changes in federal law necessary to implement the FSLIC recapitalization. When the latter are reduced to specific legislative language, we would appreciate an opportunity to submit additional written comments for your consideration. We are pleased that the proposal will accommodate the interests of those District Banks which have a higher proportion of FDIC-insured members, and we remain hopeful, of course, that the phase-out period for the special assessment will be definitive and as short as possible.

With regard to additional enforcement powers, we respectfully suggest that they best await subsequent legislative consideration. Time permitting, there may well be selected provisions from the two pending bills in such areas as the need to enforce adequate recordkeeping that could be folded into the current legislation, but we defer to the expertise and information of the federal regulatory authorities that an emergency exists of such a nature to require expeditious action on these other legislative proposals.

I would be pleased to answer any questions you may have.

STATEMENT ON

"EXPANSION OF EMERGENCY INTERSTATE BANK ACQUISITION AUTHORITY

SUBMITTED BY:

CONSUMER FEDERATION OF AMERICA (CFA)
CONSUMERS UNION (CU)
NATIONAL CONSUMERS LEAGUE (NCL)
PUBLIC CITIZEN'S CONGRESS WATCH
U.S. PUBLIC INTEREST RESEARCH GROUP (US PIRG)

BEFORE THE
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS SUPERVISION,
REGULATION AND INSURANCE

HOUSE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
HON. FERNAND J. ST GERMAIN, CHAIRMAN

May 1, 1986

Thank you, Mr. Chairman, for the opportunity to testify on proposals by the federal bank regulators to liberalize their emergency interstate acquisition authority. This statement is offered by the following consumer and community organizations:

Consumer Federation of America (CFA), which consists of over 200 state, local, and national consumer, cooperative, senior citizen, rural, labor and other citizens organizations with a combined membership of over 30 million people. CFA has, since 1968, represented these organizations before Congress and federal regulatory agencies on a wide variety of matters of concern to consumers.

Consumers Union (CU), a nonprofit membership organization, chartered in 1936 under the laws of the State of New York to provide information, education, and counsel about consumer goods and services and the management of family income. CU publishes Consumer Reports, with a paid circulation of approximately 3.5 million, which reports on its own product testing as well as on a variety of other issues that affect consumer welfare.

National Consumers League (NCL), a private, nonprofit membership organization founded in 1899 to bring consumer power to bear on marketplace and workplace issues. NCL investigates consumer issues and educates consumers about those issues, supporting consumer and worker rights through individual citizens, local affiliates and its national office. Assuring effective consumer representation is NCL's principal goal.

Public Citizen's Congress Watch, the lobbying arm of Public Citizen, a consumer research, lobbying and litigation organization with 80,000 members nationwide. Since its founding by Ralph Nader in 1971, Public Citizen has fought for product safety, a healthy environment and consumer rights in the marketplace.

U.S. Public Interest Research Group (US PIRG), a national nonprofit, nonpartisan research and advocacy organization serving state PIRGs across the country.

INTRODUCTION

The proposals now before this Committee seek nothing less than a broad expansion of federal authority to order interstate acquisitions of banks. These proposals are offered under the general declaration that there is an "emergency" that justifies a more rapid expansion of interstate activity than is currently permitted. We question whether such an "emergency" exists that present law is unable to manage, and we question whether these proposals would allow the regulators to meet the problems they have identified as justifying their bill. The clearest result of these proposals would be to remove some of the last remaining barriers to full nationwide banking. As written, the proposals provide substantial benefits to banks and further undermine local control over banking without providing any compensating assurances that consumer, neighborhood and community needs will be considered, let alone met.

REGULATORS' PROPOSALS DO NOT MEET AN IDENTIFIED NEED

Further authority for the regulators to order interstate acquisitions would be appropriate only if current authority is insufficient and if the proposed solution deals with that insufficiency.

This legislation would not have allowed the acquisition of a single bank that was liquidated in 1985. Federal Reserve Governor Preston Martin testified before this subcommittee that there were 11 farm banks for which no buyer could be found in 1985. In all, we found that there were 22 banks of all types that the FDIC was forced to liquidate in

1985. The largest of these 22 banks had deposits of only $31.6 million. Since deposit and asset levels are usually similar, clearly every bank liquidated last year was far below the $250 million asset threshold proposed. In fact, not one of the 120 commercial banks that failed in 1985, whether liquidated or acquired, had assets of more than $250 million. Against that background, we must ask where the unmet need lies.

INTERSTATE ACQUISITIONS WIDELY PERMITTED

Given the events of the past year, we find the idea that state expansion of interstate authority has been insufficient to be curious, at best. In June 1985, the U.S. Supreme Court ruled that the states have broad authority, under the Douglas Amendment, to allow interstate transactions, emergency or otherwise. In the wake of that ruling, most state legislatures have considered regional compact legislation, reciprocal interstate legislation, or both. These debates have resulted, in a period of less than a year, in passage of approximately twenty new statutes authorizing regional or national interstate acquisitions. Over thirty states now have such laws, with more anticipated in the next few months. Several states have also revamped intrastate branching restrictions.

Any state that believes that interstate acquisition authority, beyond the emergency authority in Garn-St Germain, is desirable to enhance the stability of its banking system has had ample opportunity to enact legislation allowing such acquisitions. Such a state has been able to address branching and related restrictions where those restrictions have been found to interfere with efforts to save the state's banks. Some states have used this opportunity to improve consumer confidence in their banks by eliminating unjustified check hold periods or enhancing access to basic services.

The federal regulators seem to believe, however, that these rapid and sweeping changes in banking structure are not enough. They have proposed to make it even easier for banks to buy their way into states through emergency acquisitions and then to expand within those states, notwithstanding the fact that the state may be one that has not chosen to allow such acquisitions or expansions.

The effect of all these changes and proposed changes in banking structure is a strong move away from locally-owned, locally-controlled banks. Safeguards must be enacted to substitute for reduced local control and to ensure that public responsibilities are attached to the great benefits banks are receiving.

BENEFITS OF INTERSTATE ACQUISITIONS TO ACQUIRING BANKS

The greatest effect of the proposed legislation is to open up new opportunities for interstate expansion by large banking companies. There should be no mistake about what happens when a bank is purchased in an emergency by an out-of-state bank: the acquiring bank is not merely buying a bank. It is buying access to a desirable new market. Expanding banks are not looking for insolvent banks to acquire because they like the challenge of resuscitating such banks, or for any other altruistic reason, but because buying such a bank opens new opportunities for later expansion.

This proposal will dramatically expand the supply of banks available for "emergency" takeovers. There is no reason to believe that it will as dramatically expand the demand by strong banks for takeover targets. These acquiring banks will have more options available for their initial entry into a state, and the options will be less costly. The FDIC could find its ability to set priorities and negotiate deals diminished. It could, for example, be unable to find a buyer for a large, failed bank because potential buyers can enter the same state by purchasing a much smaller institution.

We believe that present emergency acquisition provisions provide sufficient incentives for out-of-state buyers of failed banks. These benefits to acquiring banks are consistently underestimated, and the costs to acquiring banks are consistently overstated.

In February, for example, Chase Manhattan Corporation was willing to pay $62.6 million, twice the offer of the second-highest bidder, to acquire a failed bank in Florida. Chase was required to wait 18 months before acquiring other Florida banks, and agreed to inject $35 million in new capital. Why was Chase willing to pay a price regarded by its competitors as a premium for an insolvent bank? Obviously, the opportunity to enter the Florida market, even under some restrictions, was of enough benefit to Chase to pay that premium.

There is another reason as well: The obligations and costs incurred by Chase are far less than meet the eye. Chase did not pay a premium price for an insolvent bank. According to the February 18, 1986 Wall Street Journal, the transaction "leaves Chase with a so-called clean bank, or one believed to be free of bad loans." The FDIC paid $114.2 million for the privilege of taking $214.4 million in presumably nonperforming assets off of Chase's hands.

Even conceding that this deal is advantageous to the FDIC, it does not require an advanced degree in business to see that Chase has come out very well. For less than $100 million, it has bought a bank with almost $400 million in performing assets and no known bad loans, and has gained access to a market it has long coveted. It is under no obligation to take any significant steps to meet community or consumer needs. As long as its performance is not outrageously oblivious to local needs, its foothold and opportunity to expand are protected. What more could Chase possibly need?

FALSE ASSUMPTIONS ABOUT EMERGENCY ACQUISITIONS

This case points to a number of assumptions about emergency acquisitions that must be challenged. One assumption is that the banks that make emergency acquisitions are taking enormous burdens upon themselves by purchasing "sick" institutions. In fact, the FDIC is often required to excise the sick portion of an institution -- and to pay in cash for the right to do so. The acquired bank may still require additional infusions of capital from the acquirer, but it is not the sick, troubled institution it was before intervention.

Another assumption is that potential acquirers are routinely deterred from making emergency acquisitions because they would be powerless to expand in a competitive market in which expansion is necessary to survive. The fact is that between massive revisions of state laws and special one-time deals approved by the states in particular circumstances, acquiring institutions have generally received what they wanted.

Finally, there is the assumption that consumers automatically benefit from these emergency acquisitions. It is clear that the FDIC benefits when it is able to find a buyer for an insolvent bank, even if it must take over nonperforming loans. It is clear that the acquiring institution benefits when it is able to expand into new markets. Under current law, shareholders do not benefit from emergency acquisitions. It seems quite clear, however, that if the law is changed to allow acquisition of failing institutions, the shareholders of those banks will benefit enormously, no matter how culpable they were in any mismanagement or malfeasance at the bank, when they will be able to command a premium price for their shares.

But where is the benefit to the consumers who use the bank? In the Florida example, competition might not have been affected by the loss from the market of one bank. Once consumers were able to get their deposits, how did they benefit from Chase's acquisition of their bank? Might not a competing institution have been able to make commitments about the quality and availability of service that Chase would be unwilling or unable to meet? We will never know, because the quality of consumer services is not a factor among competing acquirers.

Keeping the bank open is presumed to be the only consumer concern that matters. When a bank is the only financial institution in a community, and only one bidder is available, preservation of services may well be the only concern. When competing bidders or alternative services exist, however, we should not presume that an emergency acquisition per se protects consumers' needs.

COMPLETE REVIEW NEEDED OF CURRENT LAW'S EFFECTS

Before Congress approves additional efforts to sweeten the pot for acquiring banks, this Committee should conduct a thorough oversight of the existing law. Congress should determine whether there is in fact a crisis that is not being met. It should also examine carefully the acquisitions approved under existing law to see what the effects of those acquisitions have been: How has the bidding process operated? What has happened to the services of banks acquired under this authority? What is the impact on local communities of such acquisitions? What direct and indirect benefits have acquiring institutions realized? Until the costs and benefits to all parties of the current law are carefully explored, additional benefits should not be approved.

LEGISLATIVE PROPOSALS

Whether or not this Committee concludes that existing authority is adequate, we believe that a number of improvements are necessary to insure that consumer and community needs are protected to the greatest extent possible when emergency takeovers are conducted, and as interstate acquisitions of all types proliferate.

1. Audit Assisted Takeovers

First, the current lack of information about emergency acquisitions must be systematically remedied. We note that in other instances in which the Committee has approved public assistance to private companies, for example in the Chrysler Corporation Loan Guarantee Act, it has adopted a requirement that the assisted corporation agree to such audits by the General Accounting Office as the Comptroller General deems necessary. The results of any such audits are to be reported to the Congress. We urge inclusion of a similar requirement with respect to any assisted takeover of a bank. The GAO should be required to regularly conduct audits even if no evidence of impropriety is alleged in order to provide the information the Congress requires to evaluate assisted takeovers.

2. Make Commitments to the Community a Factor in Bidding

Second, when bids are submitted for emergency acquisitions, they should include commitments by the bidders with respect to the protection or improvement of services commonly used by retail depositors and small businesses, and with respect to the credit needs of the community served by the bank. These commitments should be a factor in any agency decision among competing bidders. The acquired bank should also be required to disclose its Community Reinvestment Act rating and evaluation, as well as relevant loan data, so the community can monitor its performance.

Banks that enter new states through emergency acquisitions receive enormous public benefits, both monetary and legal. They should have an obligation in return to serve the public that provides those benefits.

3. Adopt Standards for All Interstate Acquisitions

Finally, and most importantly, the Banking Committee, in HR 2707, has already approved national standards for all interstate acquisitions to ensure that such acquisitions meet community and consumer needs and to prevent undue concentration of financial resources. Those standards have not applied to the past year's wave of interstate acquisitions because the rest of the Congress has been prevented from considering them.

Prompt enactment of these standards is a high priority for all our organizations because of the rapid pace of interstate transactions. The legislation proposed by the regulators would further accelerate those changes. Consequently, it poses high risks for consumers and communities unless their interests are specifically protected in the bill.

The provision already approved by the Committee basically insures that banks that already have inadequate records of meeting community needs are not allowed to expand interstate; requires acquiring banks to make satisfactory commitments to serve the credit and deposit needs of local communities; and requires public disclosure of loan data and Community Reinvestment Act ratings and evaluations. Such disclosures would enable communities and consumers to better monitor bank performance. The anticoncentration provisions approved by the Committee help not only to protect competition but also to prevent banking institutions from becoming so large that they would be difficult to regulate and their failure could threaten the entire banking system.

CONCLUSION

In its report on HR 2707 last year, the Banking Committee stated that it "believes that financial institutions which avail themselves of the benefits of interstate banking should continue to assure that communities and consumers have access to essential bank services." Today, whether acquisitions are made through emergency provisions of federal law or through state-adopted regional compacts, that assurance is not being provided.

The proposed legislation flies in the face of the Committee's clearly stated intent to provide for consumer and community needs. A fundamental assumption underlying the agencies' approach to past and future oversight of financial institutions seems to be that consumer and community needs are inconsistent with and wholly subservient to concerns about safety and soundness of the banking system.

We reject that assumption. We believe that banks that understand and carry out their public responsibilities are stronger banks. We also believe that a regulatory system that fails to take community needs seriously jeopardizes the public confidence that, in the final analysis, is the basis for stability of the banking system. The proposals made by the banking regulators ignore consumer and community needs and undermine local control over financial resources. Greater attention to those needs will enhance safety and soundness.

National Council of Savings Institutions

John H. Rousselot
President

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Banking, Finance & Urban Affairs Committee

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Subcommittee on Financial Institutions

May 20, 1986

The Honorable Fernand J. St Germain
Chairman
Committee on Banking, Finance & Urban Affairs
2129 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

The purpose of this letter is to provide the supplemental material you requested during the hearings held by the Subcommittee on Financial Institutions Supervision, Regulation and Insurance on May 1, 1986.

You requested the National Council of Savings Institutions to submit what we believe would be an appropriate definition of a failing bank. Under Title I of Garn - St Germain, (P.L. 97-320), a mutual savings bank may be merged or acquired if it is "in danger of closing" based on written specification by the board of trustees of the bank and the appropriate Federal or State chartering authority. They must state that "the bank is in danger of closing" and request FDIC to assist a merger or purchase. The statute also provides for consultation with the State bank supervisor, a 48-hour notice period, and a unanimous vote requirement to override the State supervisor's objections, if any. There is, however, no definition of "in danger of closing" per se.

Under the proposed Section 13 (f)(3)(A)(iii) of the "Federal Deposit Insurance Act", an out-of-state bank may acquire an insured bank with total assets of $250 million or more only with a written request from the board of directors or trustees of the insured bank for assistance with a merger or purchase. This bill also provides for approval by the primary Federal or State supervisor, a 48-hour notice period, and a unanimous vote requirement to override the State supervisors objections. All of these are substantially similar to current law as it applies to mutual savings banks. In addition, H.R. 4701 provides general guidelines to determine if a bank is "in danger of closing", including difficulties in meeting its obligations and loss of capital. Because of similarity to current law, which has proven effective, and the general guidelines added, the National Council supports the definition of "failing" as proposed.

You also requested that the National Council of Savings Institutions comment on H.R. 3567, the "Depository Institution Examination Improvement Act of 1986". It is our understanding that this measure has been amended and will soon be reintroduced.

The National Council of Savings Institutions strongly supports this

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legislation. We particularly support the provisions that allow FSLIC and FDIC to accept state examinations by qualifying supervisory agencies of insured institutions with MACRO or CAMEL ratings of 1 and 2.

On September 4, 1985, The National Council Executive Committee approved a Task Force Report on Proposed Actions to Strengthen the FSLIC. This report states, in part,

> "The changes that have taken place in the industry have stretched regulatory resources beyond the point where they can keep ahead of developments. The result has been that the resources of the Federal Home Loan Bank System have been reduced in their ability to monitor closely the institutions most in need of observation. It is likely that by concentrating limited resources on problem institutions.....some of the cases that have in the past required expenditure of the resources of the insurance fund may be caught in time before reaching that state."

Thus, allowing FSLIC to accept state examinations for institutions with MACRO ratings of 1 and 2 would allow the FHLBB to focus its resources more effectively on those institutions that are currently having difficulties or showing signs of developing difficulties.

We appreciate the opportunity to submit the National Council position of both of these issues.

Kind regards,

John H. Rousselot

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Pz= [illegible]

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TO PRESERVE THE AUTHORITY OF THE FEDERAL BANKING SUPERVISORY AGENCIES TO ARRANGE INTERSTATE ACQUISITIONS AND MERGERS FOR FAILED AND FAILING BANKS

TUESDAY, MAY 6, 1986

House of Representatives,
Subcommittee on Financial Institutions,
Supervision, Regulation and Insurance,
Committee on Banking, Finance and Urban Affairs,
Washington, DC.

The subcommittee met in room 2128, Rayburn House Office Building, Hon. Fernand J. St Germain (chairman of the subcommittee) presiding.

Present: Chairman St Germain; Representatives Annunzio, Barnard, Vento, Cooper, Kanjorski, Wylie, Shumway, Wortley, Dreier, Parris, Bereuter, and Roth.

Also present: Representative Thomas R. Carper of the full committee.

Chairman **St Germain**. The subcommittee will come to order. Today, the subcommittee continues hearings on legislation proposed by the Federal Regulatory Agencies dealing with emergency interstate acquisitions and FSLIC recapitalization.

Appearing today are Gerald J. Levy, chairman, the U.S. League of Savings Institutions; Thomas P. Rideout, treasurer of the American Bankers Association; and Eugene W. Kuthy, vice president of the Conference of State Bank Supervisors.

Gentlemen, we will put your written statements in the record. And we will ask you to proceed. We will begin with Mr. Levy. You're going to have to turn that on, and sort of be friendly with that mike.

[The letters of invitation can be found in the appendix.]

STATEMENT OF GERALD J. LEVY, CHAIRMAN, U.S. LEAGUE OF SAVINGS INSTITUTIONS

Mr. **Levy**. My name is Gerald Levy. I am from Milwaukee, WI, and I am appearing here today on behalf of the U.S. League.

The league welcomes this opportunity to address current proposals for the recapitalization of the FSLIC, revisions in the statutory enforcement powers of the Federal Home Loan Bank Board and H.R. 4701, the regulators bill.

I will devote most of my oral statement to the recapitalization issue.

We have circulated to the subcommittee a comprehensive, strategic plan for the FSLIC, which is the work product of a special task force I appointed upon assuming office as chairman of the U.S. League.

We believe the plan is consistent with our determination that the FSLIC's problems are manageable, and that the resources of our industry and the Home Loan Bank System can be employed to resolve what we believe to be the magnitude of those problems.

The administration and the Bank Board also want to resolve the FSLIC issue. We understand that they will testify Thursday on their alternative for bolstering the FSLIC.

We have received a briefing on their proposal but not the details, including any statutory language they will be proposing for implementation.

Mr. Chairman, I respectfully ask your permission to augment our testimony when those details are available. In broad outline, both plans recognize the stretchout approach to problem case resolution, a phaseout of the extraordinary one-eighth of 1-percent special assessment now applied to FSLIC insured institutions and also contributions from the Federal Home Loan Bank System to the FSLIC.

More specifically, the task force I appointed estimated the problem to be in the range of $8 to $15 billion. What we have seen about the administration's proposals show case resolutions of about $25 billion, minus asset realization of about $8 billion; an overly conservative realization amount on secured assets involving for the most part real estate.

The resulting net cost of $17 billion closely approximates the $16 billion figure mentioned by Bank Board member, Don Huvedy, in a press interview 2 days ago, and is obviously close to the upper figure of our estimate.

The administration plan envisages providing the FSLIC with total resources over the next 5 years of $31 billion. Comparing those resources with the agreed size of the problem obviously builds in a large cushion.

Both proposals are unique in that the industry itself is committing significant resources to resolve its problems rather than calling on the taxpayer and aggravating the Federal budget deficit.

The administration's proposal involves a very significant cost for the industry. They propose to phase out the special assessment in equal steps by 1992, with a total bill of $4.3 billion.

There are also indeterminate costs associated with debt service and repayment of a $10 to $15 billion borrowing leveraged from a $2 to $3 billion contribution from the retained earnings of the Federal home loan banks.

Since our institutions are also the stockholders of the home loan banks, additional costs could come from reduced dividends.

From what we have seen thus far, the total additional price tag for the industry could approach $15 billion, with a blank check as well, since the special premium authority will remain in the law indefinitely.

Our industry can tolerate some continuation of the special assessment. The plan of our own task force contemplates its phasedown over 3 years. But it is essential for industry support that any plan adopted be accompanied by a commitment that the phasedown will occur as proposed and that there is a certain end date to the statutory authority for a special assessment.

The subcommittee should appreciate that with the extra assessment, our FSLIC insured institutions are paying 2½ times as much as their FDIC insured competitors for depositor coverage.

This extra expense diminishes the funds available to rebuild capital, capital which of itself is an important question to protect the FSLIC.

Obviously, the extra cost of insuring depositors is another deterrent to attracting outside investors to our business, which further complicates the FSLIC's efforts to accomplish supervisory mergers and acquisitions.

We acknowledge that the Bank Board needs some flexibility in assessing premiums, but believe that exercise of that flexibility should be a subject for congressional review. Therefore, we strongly recommend that any legislation to accomplish FSLIC recapitalization include a certain end date to the one-eighth of 1 percent authority of existing law.

My full statement recites other potential pressures on the resources of our home finance industry, including problems in the House passed tax bill and pending changes in accounting conventions by the Financial Accounting Standards Board.

I also recite the significant reregulation which has already occurred and the bundle of sweeping new reregulation proposed 10 days ago at the Bank Board.

Our special task force was of the opinion that the situation calls for tougher supervision and we make several specific recommendations. But, not wholesale industrywide reregulation as we try to compete in today's deregulated savings environment.

We also await the Bank Board's revised request for enhanced authority in the enforcement statutes. We are generally supportive, though may differ in a few details, as we are supportive of congressional efforts to free the agency and its supervisory personnel from unrealistic restrictions imposed by OMB.

Finally, we again urge this Congress to plug the nonbank bank loophole through redefinition of the term "bank" in the Bank Holding Company Act. Continued exploitation of a loophole is not only disruptive to the entire banking and thrift system, but greatly diminishes the ability of the FSLIC to attract rescuers for troubled thrift institutions.

I've appreciated this opportunity to appear again before your distinguished subcommittee, and look forward to your questions.

I would like to also take this opportunity to personally thank the chairman for his efforts in corresponding with Chairman Rostenkowski on a matter involved in the tax reform bill that dealt with certain specific provisions that facilitate supervisory mergers of FSLIC-insured institutions. And your assistance was very much appreciated.

[The prepared statement of Mr. Levy may be found at the conclusion of this day's hearing in the appendix.]

Chairman St Germain. The subcommittee will be in recess so that we can cast a vote now in progress, and we'll be back in approximately 5 minutes and will proceed with our next witness at that time.

[Recess.]

Chairman ST GERMAIN. At this time, we'll hear from Mr. Rideout, who is our next witness. We have put your entire statement in the record. You may proceed.

STATEMENT OF THOMAS P. RIDEOUT, TREASURER, AMERICAN BANKERS ASSOCIATION (ABA)

Mr. RIDEOUT. Thank you.

Mr. Chairman and members of the subcommittee, I am Thomas P. Rideout, president and chief executive officer of Savannah Bank and Trust Co., in Savannah, GA. I am also treasurer of the American Bankers Association and a member of its board of directors.

The subject of these hearings is very important. The outcome of your deliberations will affect the future of the banking industry, its deposit insurance system and our economy as a whole.

Because the subject is so significant, we devoted a substantial amount of time to it in our recent Banking Leadership Conference.

As you know, Mr. Chairman, this is the largest and most broadly-based policy advisory group our association has. Although our leadership conference did not have the benefit of the precise proposed legislative language, which was——

Chairman ST GERMAIN. Excuse me. I did want to congratulate you because I understand that you are treasurer of ABA?

Mr. RIDEOUT. Yes, sir.

Chairman ST GERMAIN. But, you are also part of the Georgia Railroad Bank?

Mr. RIDEOUT. Our company is a member of the First Railroad Banking Co.

Chairman ST GERMAIN. Correct.

Mr. RIDEOUT. Yes, sir.

Chairman ST GERMAIN. Therefore, I would like to put this into my introduction, the fact that Railroad Bank and yourself have reached what one might call a pinnacle in the ABA.

You may proceed.

Mr. RIDEOUT. Thank you very much, Mr. Chairman.

Mr. BARNARD. Mr. Chairman, I would also like to welcome Mr. Rideout to our testimony today. He's a very distinguished banker in Savannah, GA and I'm delighted that he has come in representing the ABA to our meeting today.

Welcome, Tom.

Mr. RIDEOUT. Thank you very much, Congressman.

Continuing, although our leadership conference did not have the benefit of the precise proposed legislative language which was subsequently submitted to Congress, we did benefit from the input of Chairman Seidman of the FDIC, who addressed the conference.

We also benefited by a presentation by a panel of bankers from the troubled agriculture and energy States that could conceivably be most affected by the proposals you are considering.

In the past 8 years, our economy has gone through a very difficult adjustment period. We've experienced first strong inflation and double-digit interest rates; then substantial disinflation and

steep recession; and now a resumption of more moderate and stable growth.

This volatility has taken its toll on our economy and certain sectors have been hurt more than others. Two areas that have been particularly hard hit are energy and agriculture.

Because banks lend to almost all sectors of the economy, the condition of the banks is inevitably a reflection of these ups and downs. Regulators, with the support of Congress, have acted progressively in designing regulatory forbearance procedures which would help bankers and their customers in making adjustments to these often difficult conditions.

The participants in our Banking Leadership Conference saw the issue before the subcommittee today as one calling for a careful balancing of: one, the need for greater regulatory flexibility to deal with troubled institutions, with, two, the ability of States to determine their own process, if any, for engaging in interstate banking.

After listening to FDIC Chairman Seidman and bankers in agriculture and energy States, our banker delegates determined that the regulators did need greater flexibility than that provided by the current provisions of title I Garn-St Germain.

Undoubtedly, such flexibility, if implemented, will hasten interstate banking in the affected States. It is interesting to note that since the Supreme Court decision in *Northeast Bancorp*, interstate banking in various forms has been proceeding rapidly via State laws.

We estimate that, by the end of this year, over ⅔ of the States will have enacted some type of interstate legislation. Nevertheless, we recognize that this evolution in State laws may not give the regulators the flexibility needed to resolve important troubled bank situations.

Our bankers were concerned that, without this additional flexibility, the regulators might find it difficult, or even impossible, to find a purchaser for particular troubled banking institutions.

If the regulators were unable to find a purchaser, they might be forced to resolve a bank failure in a manner which has a negative impact on the local and statewide economy as well as on other banks in the same State.

We believe the regulators should, in general, have the flexibility they need to avoid such results. We might wish that there were better alternatives, but realistically, there do not appear to be any.

Nevertheless, we do have some suggestions as to how the regulators' proposal might be fine-tuned to limit its impact on the various State banking laws without inhibiting bids from potential acquirers when they are needed.

But, first, let me present our position. Again, this position was adopted by our board after a thorough review by our Banking Leadership Conference, but before the regulators bill in its final form was developed.

The statement, which is dated April 18, 1986, reads as follows:

> The Federal Banking Regulators have developed a proposal providing for additional regulatory authority for emergency acquisitions of failing financial institutions. The American Bankers Association, in light of current economic circumstances, supports legislation which would grant the regulators the additional authority they have requested.

The ABA also adopted the following additional policy positions intended to refine the regulators proposal.

First, the definition of a "failing bank" which would be eligible for emergency acquisition should be strictly drawn.

Second, any emergency acquisitions under the expanded authority should be permitted only if the State banking regulator in the failing institution's home State does not object to the acquisitions.

Three, while ABA supports a reduction in the threshold size of the institution to be acquired from $500 million to $250 million as requested by the regulators, ABA believes consideration should be given to reducing the threshold further under appropriate circumstances.

And, four, this expanded regulatory authority should be subject to a 3-year sunset provision.

The statement goes on to read:

> The ABA Banking Leadership Conference emphasized strongly that legislation is also needed to close the nonbank bank loophole because the existence of the loophold undercuts the motivation to acquire failing banks.

Subsequent to this April 18 meeting, we received the proposed legislative language submitted to the Congress by the regulators. We are pleased to see that most of the concerns of our Banking Leadership Conference have been at least partially addressed in the proposed legislative language.

We do still have a few concerns which I would like to now address.

First, as discussed more fully in my written testimony, the definition of "failing bank" needs to be modified.

Second, the provisions of Garn-St Germain regarding the role of the bank supervisor are kept in the proposed extension. These provisions state that, in the event of a proposed interstate acquisition of a troubled bank, there shall be notice to and opportunity for objection by the State banking supervisor. And if the State banking supervisor objects, the FDIC's Board of Directors may exercise its authority only by unanimous vote.

We believe that in troubled bank situations, the interest of Federal and State supervisors in resolving the problems are largely the same, and that the State regulator has a unique understanding of his or her State. Therefore, our preference would be for as strong a role for the State supervisor as is practicable.

The proposed legislation would lower the old $500 million limit of title I to $250 million. We support this reduction and note that at our recent Banking Leadership Conference there was significant sentiment for reducing this level further. We suggest that this be considered under appropriate circumstances. Additional formulas, such as allowing emergency interstate acquisitions of the largest three or five banks in the State, also deserve consideration.

Additionally, we prefer a 3-year sunset provision to the 5-year period specified in the proposed legislation.

The proposed legislation specifies that an out-of-State bank which acquires a bank through an emergency acquisition may acquire additional banks located in the three largest metropolitan areas in the State provided that the bank holding companies within the State are allowed to expand to the same extent.

At the time of our consideration of this legislation, no such provision was in the regulators proposal. Nevertheless, our board of directors recognized that some form of expansion rights within the State might have to be granted in order for the FDIC to obtain the necessary bids.

However, they felt that this concern needed to be balanced against the possibility that an out-of-State bank, not subject to the economic problems that affected large numbers of in-State banks, could acquire a single bank through an emergency acquisition and then be in an extremely strong acquisition position vis-a-vis other in State banks.

In other words, the new entrant might be able to move quickly to acquire other banks while the in State institutions are still recovering from the economic downturn.

Because our board did not have a chance to consider this specific provision of the regulators bill, we have not developed a detailed position.

Chairman St Germain. Excuse me. Do you intend to?

Mr. Rideout. We think that this is a matter which should be discussed between the Congress and the regulators. We would then comment on those discussions.

Chairman St Germain. Well, don't wait too long. You know, you've got some highly competent, well-trained, with wonderful backgrounds, well-paid personnel over there at the ABA.

I see them pointing to each other and nodding in affirmation. [Laughter.]

And I think that, certainly, they can come up with some very, very unique comments here in a very short period of time.

Mr. Rideout. We do have, Mr. Chairman, one suggestion. A new entrant could be granted expansion rights after a phase-in period in the kind of situation I described. We don't want to suggest what the precise time might be, but 18 months, for instance, is a number that's been thrown out as a possibility.

Chairman St Germain. That's a familiar number.

Mr. Rideout. So, finally, we note that the nonbank bank loophole has not been closed. The existence of this loophole will obviously undercut the efforts of the regulators to sell troubled institutions.

The sooner this problem is dealt with, the better off we all will be. And in this regard, we wish to reiterate our strong support for H.R. 20 as reported by this committee.

In conclusion, questions of changes in interstate banking law raise many difficult issues which must be dealt with cautiously. These issues must be balanced with the need for the regulators to have the tools they need to handle the difficult problems they face in dealing with troubled institutions.

The proposal you are considering is a good start towards the required balancing of delicate issues. We have some general concerns which have been dealt with partially in the proposed bill. We have tried to make further specific suggestions as to how our concerns could be further addressed, which we hope will be useful to the subcommittee.

It appears that this legislation may need to be enacted fairly quickly and, under current circumstances, it is our feeling that the regulators deserve our support.

[The prepared statement of Mr. Rideout may be found at the conclusion of this day's hearing in the appendix.]

Chairman St Germain. We are going to call on Mr. Kuthy on a moment, but if you'll read the last four sentences of your statement, I'm going to ask you to sort of provide a little more than just a phrase, "We believe the circumstances." We are going to ask you to be a little more specific, when we get to the questioning.

Now we'll hear from Mr. Eugene Kuthy, who is vice president of the Conference of State Bank Supervisors.

Mr. Kuthy, as you know, your entire statement will be entered into the record.

You may proceed.

STATEMENT OF EUGENE W. KUTHY, COMMISSIONER OF FINANCIAL INSTITUTIONS, STATE OF MICHIGAN, AND VICE PRESIDENT, CONFERENCE OF STATE BANK SUPERVISORS (CSBS)

Mr. Kuthy. Mr. Chairman, and members of the subcommittee. I bring the regards of Gov. James Blanchard of Michigan to his former colleagues.

I am Eugene W. Kuthy, commissioner of financial institutions for the State of Michigan, and vice president of the Conference of State Bank Supervisors, on whose behalf I am testifying today.

Let me state at the outset, that CSBS recognizes that a problem exists, particularly in certain areas of the country and with certain types of banks, especially those heavily committed to agriculture and energy lending.

CSBS is willing to work with the Federal agencies to expand their regulatory flexibility and better utilize their existing authority; however, the scope of the current problem has been insufficiently defined.

Chairman St Germain. Excuse me.

It is a little disconcerting to have flashes going on while the witness is testifying. We've installed lighting in here so that we avoid flash cameras, and I would ask that you not use a flash. The taxpayers paid a lot to avoid that.

Sorry, Mr. Kuthy.

Mr. Kuthy. Yes, sir.

However, the scope of the current problems has been insufficiently defined to sustain the broad request for increases in statutory authority now proposed by the Federal agencies.

CSBS would be willing to support legislation which is necessary to meet the situation, provided that such legislation provides adequate safeguards to ensure that it is used as a last rather than a first choice.

CSBS will never support measures to insulate the Federal deposit insurance fund from assisting transactions or paying the depositors of insurers by selling interstate franchises in contravention of State law, the Douglas amendment and the orderly evolution of the banking structure.

In essence, our position is that the Douglas amendment is not and should not be for sale.

The Federal bank regulatory agencies have proposed greatly liberalizing their own authority to deal with problem banks. Those who propose changes bear the burden of showing that such changes are necessary and that there are not significant disadvantages involved in making the proposed changes.

CSBS believes that the Federal agencies have failed to meet that burden on both counts; however, the legislative approach which has been proposed by the Federal regulators boils down to financing the deposit insurance fund already paid for by the industry with a year-end balance of $17.9 billion by selling interstate franchises to rich buyers in States where such would not be otherwise available.

The burden of proof that the proposed changes are necessary has not been met nor has the scope of the problem been defined. First, the FDIC has not demonstrated a need for the expansion of its authority to include the interstate sale of banks in danger of closing, on the basis of inadequacy of current law. State laws and regulations have provided adequate flexibility to arrange such transactions and in several cases have been specifically amended to accommodate the interest of the FDIC in handling failing banks.

In one case, a remedial State statue was enacted within 1 week. It must be remembered that the interest of the State in fashioning a timely and suitable remedy to a problem situation is at least as great as that of the FDIC, if not more so.

Second, the FDIC has not demonstrated that any significant cost savings would accrue from the proposed expansion of its authority. Certainly, it is not true that cost savings would be universal, as has been implied.

In some cases, the regulatory tool selected to meet broader objectives may not represent the lowest projected cost.

Historically, however, there has not been a wide spread between the actual loss figure for the various tools.

Third, the FDIC has not made any specific case with regard to the sale of entire bank holding companies as a package. It has shown that it could not successfully sell the lead bank alone, that the remaining holding company could not survive after sale of the lead bank or that selling off the healthy parts of the bank holding company to revive the troubled lead bank, the traditional way of handling such problems, is not still the most effective way of handling such problems.

The burden of proof that there are no significant disadvantages involved in making the proposed changes has also not been met. In fact, there are serious legitimate countervailing considerations.

One, broader public interest should be served in deciding whether and when to close the bank, not merely the protection of the insurance fund. Whether or not it is true that earlier closing of a problem institution will result in a smaller loss to the fund, broader public interests are served by our system of bank regulation and are entrusted to the primary regulators of banks.

Two, expansion of FDIC authority to sell interstate franchises respresents an unwarranted departure from our current system of bank regulation.

Mr. Chairman, as you have said:

> The emergency powers are tantamount to a major rewriting of the Nation's banking laws, particularly, the McFadden and Douglas Acts relating to interstate banking.

Obviously, there are implications for the insurer of the institution in both the timing and the way in which a failing situation is handled; however, the sale of interstate franchises, a waiver of existing law with competitive advantages for the benefit of a few already advantaged institutions, should not be undertaken unless absolutely necessary.

It is deplorable to think that the largest institutions in the Nation and the shareholders of problem banks will benefit from economic problems under which others must suffer.

Windfall profits coming from the interstate sale of problem banks, like war profits, should not reward shareholders of those institutions.

Three, there is great potential for the abuse of discretion in the determination of what is a failing institution or when such authority should be invoked.

Four, the safeguards provided by proposals to date are totally insufficient in protecting valid State and local interest in the banking system.

And finally, the expansion of the FDIC's ability to sell banks in danger of closing would undercut the current market for failing thrifts.

CSBS believes that possible alternatives to the drastic legislative proposal before you have not been adequately explored. We believe that opportunities to assist intrastate transactions through the use of bridge banks or other mechanisms which buy time for the FDIC should be taken advantage of. Forgotten in the debate to the present time is the rule that the least drastic alternative should be explored first.

If need for legislation to supplement the FDIC's existing authority can be shown, we are willing to work with the Congress and the agencies to minimize the serious disadvantages in the proposed changes identified.

Such legislation, in order to have the acceptance of CSBS would have to include several key elements. These are outlined at pages 12 to 14 of my written testimony submitted to you earlier. I trust you've had a chance to review those, and I will not reiterate them at this point.

Additionally, CSBS feels strongly that the FDIC should not be allowed to sell an entire bank holding company as a package deal. Selling off profitable subsidiaries of the bank holding company separately, as is current practice, continues to make good business and policy sense. The possibility of parceling the assets of a bank holding company for offer intrastate, so that something less than the entire bank holding company could be bid upon, would also help in this regard.

Finally, CSBS strongly believes that legislation is needed to close the nonbank bank loophole, because the existence of the loophole undercuts the motivation to acquire problem institutions of any type.

Thank you, Mr. Chairman, members of the subcommittee. I would be happy to answer any questions.

[The prepared statement of Mr. Kuthy may be found at the conclusion of this day's hearing in the appendix.]

Chairman St Germain. Mr. Kuthy, have you, in your capacity with the Conference of State Bank Supervisors, been in contact with the State bank supervisors of the other States—of those States that seem to be particularly affected by the situation that prevails as far as energy and agricultural loans are concerned?

Mr. Kuthy. Yes, sir.

Chairman St Germain. And do they agree with the statement that you've propounded to the subcommittee this afternoon?

Mr. Kuthy. They are in general agreement with that.

Chairman St Germain. Are there any in disagreement?

Mr. Kuthy. Not to my knowledge. If they are, they will appear independently, sir.

Chairman St Germain. Did the regulators sit down with the Conference of State Bank Supervisors and discuss this situation with the Conference of State Bank Supervisors, so that they could outline to them what type of emergency exists out there?

Mr. Kuthy. Not in advance of the submission of their proposal. There were some brief preliminary discussions, a proposal was submitted, and we had most recent discussions at our annual meeting here some several weeks ago, in which we outlined many of the concerns that have been submitted to your committee.

Chairman St Germain. What I am asking is, have the regulators met with you and outlined the problem? They've outlined the solution every place, but have they discussed the problem with the Conference of State Bank Supervisors?

Mr. Kuthy. I am implying from your question, sir, in extreme detail, no, sir.

Chairman St Germain. Mr. Rideout, I assume that you have been listening with rapt attention to the testimony of Mr. Kuthy, on behalf of the Conference of State Bank Supervisors.

Mr. Rideout. Yes, sir.

Chairman St Germain. And at one point, he says, on page two, "However, the scope of current problems has been insufficiently defined to sustain the broad request for increases in statutory authority now proposed by the Federal agencies. And then, later on, he says, page 4, "The burden of proof that the proposed changes are necessary has not been met nor has the scope of the problem been defined." And then, of course, they oppose the selling of the packaged—the bank holding company package. They say that they should shear off the particular bank and the holding company.

Now at the end of your statement you just concluded that, you said "Amen," and this legislation is necessary.

How do you balance the end of your statement with that which prevails throughout Mr. Kuthy's statement, who appears on behalf of State Bank Supervisors?

Mr. Rideout. I obviously have no specific detailed knowledge of the extent of the problem which the regulators have. As I mention in my statement, Chairman Siedman, on April 17, spoke to our Banking Leadership Conference and outlined the concerns which the regulators have about the situation. As part of our discussion of this issue, we also heard from a panel of bankers who are operating in States bounded by the energy economy and the agricultural economy as well.

Chairman St Germain. Are you talking about bankers from those States?

Mr. Rideout. From those States——

Chairman St Germain. Yes. Yes. Yes.

Mr. Rideout. That are to a great extent dependent upon agriculture or energy as the main engines of their States' economies.

And certainly a combination of Mr. Siedman's comments and what these bankers said about the situations in their States, would indicate that there are some difficult situations. I think one only has to add to that what you read in the daily press, in the Wall Street Journal and other sources about ongoing problems in the banks in Oklahoma and Texas to have an appreciation for the fact that there are some very difficult situations that exist in those States.

So I am not exactly sure why the Conference of State Bank Supevisors has the position they have, but our banking leadership——

Chairman St Germain. Well, let's ask Mr. Kuthy then—Mr. Kuthy, you heard what Mr. Rideout has to say on this, now what do you have to say about what Mr. Rideout has to say?

Mr. Kuthy. It would seem to me that there has been a bottoming out in at least one of those afflicted economic sectors, based on my reading and others within our association of regulators. We see that energy prices seem not to be going down, but at least stabilizing, if not going back up. I think—if I might add, Mr. Chairman, the other question is that the proper remedy would seem to us to be to consider aiding the affected industries or economic sectors rather than contravening longstanding congressional policy regarding the banking industry.

Chairman St Germain. My time has expired, but we will return to this little topic. Mr. Barnard.

Mr. Barnard. Mr. Kuthy, it seems to me that you are putting the burden of proof entirely on the regulators to satisfy the fact that we have a need.

What has your organization done to satisfy yourself that we do not have a need? I mean, have you gone to the regulators and asked them to give you the information that they had compiled? And I say that, because of the fact, as one Member, the fact that three regulators, the Federal Reserve, Comptroller of the Currency and the FDIC have gone to some real serious considerations and extreme—appear to me extreme urgency to get this bill before the House, and where we are, Members of this committee, we feel that they are responsible people, unless you say they are not responsible, and it appears to us that there is a very, very immediate need out here.

Now this is the second group that has been before us, the second banking group that has been before us that said we did not need the bill. They had two consumer groups that said we did not need the bill.

So I'm just saying, what have you done to satisfy yourself that there is no need for this bill?

Mr. **Kuthy**. Mr. Barnard, No. 1, there are 50 of us who are also regulators, as our Federal counterparts are, and we meet in somewhat parity with our Federal colleagues on these questions. We reviewed the situation, much as they have indicated that they've reviewed the situation, and as is often the case, we have disagreed. We do not believe the need is as great as they have suggested.

Mr. **Barnard**. In other words, you feel like that the FDIC—the reserves of the FDIC are capable of carrying forth this problem?

Mr. **Kuthy**. We have not seen a demonstration from the FDIC that they are inadequate to meet the problem.

Mr. **Barnard**. You're willing to risk that, your association is willing to risk that responsibility?

Mr. **Kuthy**. The FDIC, in our opinion, has the responsibility to bring forth compelling reasons to change existing laws that Congress has had on the books for a long time and to review arguments that have been made in the past, sir. It is our feeling that this linen has been washed once before, and we are now being asked to rewash it under some changed circumstances. We would like to see the evidence in detail that those circumstances have, indeed, changed.

Mr. **Barnard**. So your position is that there are no problems with energy banks?

Mr. **Kuthy**. There are problems with some energy banks. There are problems with some agricultural banks. There were problems in my State in Michigan, when our automobile industry faced difficulty. There have been problems in Pennsylvania and other States, as their economic sectors have either gone into decline or suffered from some either international or national circumstances.

Mr. **Barnard**. Did you think that Chrysler could have made it without some help?

Mr. **Kuthy**. No, sir. And we are very grateful for the Congress in recognizing that appropriately.

Mr. **Barnard**. Well, you see, I must pursue what the chairman has gotten underway, because should we abandon this exercise this afternoon and walk away? Is that what you're suggesting that we do?

Mr. **Kuthy**. We are simply asking that evidence be offered in very compelling fashion for the change that is being proposed

Mr. **Barnard**. Well, to some of us, that evidence has been established, and I have had an opportunity to have a private confidential meeting with each of the regulators. They are unanimous to the degree that the need was imperative. It had to be done immediately, that it had to be done not in conjunction with any other legislation. But it was something that had to be done.

And, you know, I don't know, as one Member of Congress, that I want to risk breaking the corpus of the FDIC, and frankly I think it would be incumbent upon CSBS to get a lot more concrete information before you would come to us and tell us we don't need this bill because, let me say, we value your testimony. We value the opinions of the 50 commissioners of banking or superintendents of banking.

I have got one in my State who is a very, very valuable person as far as my advice and counsel, a former president of your organization.

Mr. Kuthy. Yes, sir.

Mr. Barnard. But it does concern me that the banking industry and the banking regulators are not as concerned as the major regulators.

But I guess I have dwelt on that long enough.

Do you join Mr. Levy in the fact that this bill ought to run along with H.R. 20?

Mr. Kuthy. Yes, sir.

Mr. Barnard. Why do you say that?

Mr. Kuthy. We made the comment that closing the nonbank bank loophole, we think, will remove many of the incentives for equit—

Mr. Barnard. Well, what makes you think that the nonbank bank loophole has not been closed, at least to some degree?

How many States do you know of that have closed the nonbank bank loophole?

Mr. Kuthy. I couldn't answer that.

Mr. Barnard. I think there are about 16 or 17 States that have already done that. The Comptroller of the Currency is under injunction not to do any more.

So why is it so imperative that the regulators' bill run in conjunction with that?

I mean, it is not happening. I mean, again we are talking about a concern that is not happening.

And I would say, Mr. Levy, that is the same way that I would respond to your statement, that it looks like to me we are talking apples and oranges.

And I may have been misled by the regulators, but I am very much concerned that this regulators' bill be considered quickly and hopefully that it is going to solve a problem, and I don't know that I want to take that responsibility as a Member of Congress and risk the corpus of the FDIC.

My time has expired.

Chairman St Germain. Mr. Shumway.

Mr. Shumway. Thank you, Mr. Chairman.

Mr. Rideout, I notice throughout your testimony, particularly in the opening pages of it, you state repeatedly that you believe there needs to be more flexibility on the part of the regulators in dealing with these problems. I also realize when your association studied this issue you didn't have the benefit of the regulators' proposal before you.

But is there anywhere in your statement where you specifically define what is meant by "more flexibility?"

I looked for that, but I am not sure I know where to look.

What is it you are referring to in terms of more flexibility on their part?

Mr. Rideout. Well, Congressman, I think the question of flexibility really speaks to the fact that we have a very complicated situation from State to State. We have different banking structures in different States. We have different situations regarding the failing bank issue.

And I think our feeling is that what needs to be worked out is a bill which will be practical in its effects, which will give the regulators the tools that they need to practically deal with the situations which they encounter, and that is where we are on it.

It is difficult to be specific in terms of what our association would think about various details. We have not had an opportunity for our Government Relations Council, which typically hammers out our position on these matters, to meet since the legislation was introduced. It will be meeting in 10 days, and I think we will be in much better shape 10 days from now to speak with you very directly about some of the specifics that we would propose.

We are simply not in a position to do that, and what I am presenting to you today basically is a policy position which was developed by our Board of Directors after the presentation by Mr. Seidman and by our panel of ag and energy bankers to our Banking Leadership Conference.

So what we are trying to set forth today is more a philosophy of practically dealing with the situation and giving as much flexibility as is necessary to the regulators in dealing with this, but obviously having safeguards in the bill which would make sure, for instance, that full State interstate banking, nationwide interstate banking, doesn't come overnight as a result of the bill.

It is this balancing of needs that we are trying to get to.

Mr. **Barnard**. Mr. Shumway, would you yield just for a second?

Mr. **Shumway**. Yes, I would be happy to yield.

Mr. **Barnard**. Mr. Rideout, what you are saying is that the ABA took the time and the energy to hear out Dr. Seidman and you also listened to bankers from these particular affected areas, bankers themselves?

Mr. **Rideout**. Yes, sir.

Mr. **Barnard**. Who else did you hear from to come forth to endorse the bill?

Mr. **Rideout**. Basically, that was the group that we heard from. There was obviously a lot of discussion about this at our meeting, which was a 2½-day meeting, but in terms of formal presentations that was it.

Mr. **Barnard**. Thank you.

Mr. **Shumway**. So you aren't telling us specifically what you mean by more flexibility but just in general terms. I suppose that means to give the regulators as broad a latitude in terms of exercising their powers as possible and also to give State banking supervisors again a very loud voice in the determination of these issues.

Is that flexibility? Is that what you mean?

Mr. **Rideout**. Yes, sir. In other words, we support the broad outline of the regulators' bill. We obviously would like to reserve the right to comment on certain specifics.

But just to follow up on what you said about the role of the State banking superintendent or supervisor, we feel very strongly that that individual, being as close as he or she is to the market, should have a very heavy input into decisions that are made about the possible sale of failing banks on an interstate basis.

We feel quite strongly about that, and that I think is the kind of balance we are talking about. In effect, it says the regulators should have these tools, but there needs to be a lot of local input as well.

Mr. SHUMWAY. OK, one other question along this same line, and I suppose your answer would be the same. I am not trying to take your statement apart, but I am anxious to get to some concrete suggestions.

You say that consideration should be given to reducing the threshold further under appropriate circumstances.

Now, we are going to have to decide how much lower should that threshold be lowered, if at all, and under what kind of circumstances. We can't just say appropriate circumstances.

And I suppose again you would have the same response, and hopefully, when you look at this legislation again in 10 days, you may have some specifics in that regard.

Mr. RIDEOUT. Well, let me just give you a hypothetical example of what we are talking about there.

You might very well have a State where the largest banks in the State, the top four or five banks in the State, are not particularly big. Some may not be in excess of $500 million. Others may go up to a billion or two, but they might not be in a position because of the energy situation or the agriculture situation to help banks which were failing. They might not have the financial wherewithal because of their own troubles to acquire those banks.

In a situation like that, you might want the regulators to have some flexibility to, for instance, sell a bank of $200 million or $150 million to perhaps someone in the region if there were a regional compact, a reciprocal regional interstate banking law in place, or to some other bank that was not nearby if there was no regional pact in place.

That is an example of the kind of flexibility we are talking about. How you write that in a bill is something I personally can't answer, but that is an example of what we are speaking of.

Mr. SHUMWAY. OK, thank you. My time has expired.

Thank you, Mr. Chairman.

Chairman ST GERMAIN. Mr. Vento.

Mr. VENTO. Thank you, Mr. Chairman.

Mr. Rideout, I did read your statement. I haven't had a chance to read all of Mr. Levy's.

But in your statement you point out that you had the benefit of the bill after a general endorsement, and you seem to be raising a lot of the same questions that Mr. Kuthy is raising with regards to this issue; that is to say, that they point out here the criteria for a bank in danger, and then you point out that the third criteria is overly vague and its meaning is difficult to discern on page 5 of your testimony.

I think this is exactly the problem with that particular phrase; in other words, that this would be maybe the first thing done rather than the last thing done; that is, the idea that we would have an interstate sale law.

In other words, you feel that there has to be some rather precise definition of what we are talking about here, is that correct, with respect to these new powers?

Mr. RIDEOUT. Well, first of all, we think there is a problem, and I think we have spoken to that.

With respect to the criteria which the regulators have put forth in the bill, they set forth three criteria, and the first two criteria spoke in terms of "Federal assistance."

But "Federal assistance" is not defined, and we would suggest substituting language for that phrase "Federal assistance," a phrase like "potential losses to the FDIC." I think it is important to make a distinction. "Federal assistance" might embrace, for instance, the use by a bank that is having a liquidity crisis of the discount window at the Federal Reserve; and yet if the criteria were drawn and passed into law the way it is written, some regulator might argue that because someone is using the Federal Reserve, that therefore that bank is failing and that it should automatically be subject to being sold.

Mr. Vento. OK.

Mr. Rideout. And so we think there needs to be some work on those kinds of concepts.

Mr. Vento. Well, how about the one on page 5, "in danger of closing until other grounds exist or are likely to exist under state law for closing the bank"?

What the hell does that mean?

Mr. Rideout. Where was this, please?

Mr. Vento. On page 5. I mean, you said the proposed legislation lists three criteria used to determine if a bank is in danger of closing. In other words, they seem to have two specific ones, and then come up with a third one, which seems to be just a general, you know, under State law for closing the bank.

Mr. Rideout. Yes. Well, those are the criteria that——

Mr. Vento. Are you satisfied with those?

Mr. Rideout. Well, we think that the third criteria is vague, and we have difficulty determining exactly what it means.

Mr. Vento. Right.

Mr. Rideout. We just think that those criteria need to be fleshed out a little more carefully and need to be a bit more precise.

Mr. Vento. Well, what about this business about the interstate? I mean, aren't the States already making a decision on a case-by-case basis on the basis of court decision whether they want interstate banking? Isn't that a possibility?

I mean, it seems to me that the regulator is jumping in here now once there is a pattern established for interstate banking and using that to defend the fund.

I mean, can't they go into the States and convince the States what is good for them in terms of interstate banking if they have problem banks within their States?

Mr. Rideout. Well, there may be laws. There may be States where laws have been passed recently which would give the regulators the flexibility they need; however, in those States where there are not sufficient laws giving them this flexibility, the regulators really need the ability to move ahead and deal with the situation.

Mr. Vento. Well, do you think they need to move ahead so quickly that they override the State regulation completely, the State regulators are not going to deal with this competently, or what?

Mr. Rideout. Well, I guess what I am suggesting is that the State legislative process may not be adept enough or be able to be invoked quickly enough to deal with situations that potentially could have very serious effects on other banks in that State and on the State's economy.

So all——

Mr. **Vento**. Mr. Kuthy, I guess democracy doesn't work very well in terms of this.

Do you agree with that, that the State legislators can't respond quickly? It seems to me you are saying the opposite.

Mr. **Kuthy**. We have had many instances of very quick response to problems by State legislatures, but I think really the question that is being raised is: what is the scope of the problem, and what is necessary to address the problem?

That is what we keep saying in our testimony.

Mr. **Vento**. Well, we think they have had a lot of secret meetings that take place, but I don't know if they come up here and tell us what the problems are. Apparently, they are too serious to talk about in public.

Mr. **Kuthy**. I can't comment to that particular point. I suspect that, as with so many other things, inferences can be drawn from that information that would be compelling.

We have met with the FDIC. We have met with the Federal Reserve and the OCC, and we have bankers and commissioners representation from all of the 50 States, and we are still asking ourselves whether the case for what is being asked for has been made, and we are finding some difficulty in that.

Mr. **Vento**. Do you think that this is important enough to set aside all State regulation, all antitrust law, all concerns about concentration, and so forth and so on? Is it that important?

Mr. **Kuthy**. It is clearly rhetorical, Mr. Vento. We challenge that point.

Mr. **Vento**. Well, I do, too.

Mr. **Barnard**. Would the gentleman yield?

Mr. **Vento**. If I have time, I yield to my colleague from Georgia.

Mr. **Barnard**. I think that if you look at the bill it doesn't really do that. The bill protects. The decisions can be overridden within the State. The States can override any decision to mandate an acquisition across State lines.

I mean, that is very well protected in the bill. Isn't that right, Mr. Kuthy?

Mr. **Kuthy**. I would challenge whether that protection is there with that 48-hour——

Mr. **Barnard**. Have you studied the bill?

Mr. **Kuthy**. Yes, sir.

Mr. **Barnard**. Well, I have studied the bill very carefully.

Well, it looks like to me that they have leaned over backward to do that.

Mr. **Vento**. Well, I think, you know, since everyone agrees that it should be that maybe anything that comes through we will have to make certain of that.

I thank the chairman.

Chairman **St Germain**. Mr. Parris.

Mr. **Parris**. Thank you, Mr. Chairman.

Mr. Kuthy, it is good to see you again.

Mr. **Kuthy**. Yes, sir.

Mr. PARRIS. Gentlemen, I appreciate very much this testimony this afternoon. I concede to you a certain amount of frustration. The financial strain on FSLIC is a very important pressing problem, in my view, and the frustrations of trying to deal with it within the limitations of time are enormous.

Let me mention that somebody once asked Willie Sutton why he robbed banks, and his answer was that is where the money is. That is fairly simple, and I suppose that is why we have the inevitable covetous glances at the Federal Home Loan district banks because they have lots of cash and the ability to go to the capital markets at the Federal agency rate to raise additional capital.

So maybe it is inevitable that the district banks are where we look to the solution, for at least some of the problem.

But I would like to in my limited time chat with Mr. Levy initially about a statement on page 8 and 9 of your statement, Mr. Levy, where you suggest that the U.S. League earlier objected to the 1 percent set-aside, an up-front recapitalization, because you questioned, as I recall, the ability of the industry to prudently utilize $9 or $10 billion all at once, and you talk about the possibility of a fire sale which would dramatic impact, et cetera.

Does the league still take that position? Does that continue to be your position?

Mr. LEVY. That continues to be our position.

Mr. PARRIS. One thing that confuses me a little about that, Mr. Levy, if I read correctly, in your task force report you talk about—in a kind of one-line comment, you support the management consignment program, which is really designed, I am told—and I am intrigued by the use of the word—as a temporary holding device.

I don't know how long temporary is, but it has been going on for quite some time now, and I don't see a lot of action in that regard.

But the management consignment program is designed, is it not, as a warehousing of some troubled situations and ultimate liquidation and workout, and that sort of thing. The section 406 program is a liquidation program.

How does that impact less than any other way? Don't you get the same fire sale?

Mr. LEVY. No, I think that pointing out the MCP just underscores the concern that we have raised.

The MCP program was designed to fill a void, and that was the inability of the staff of the FSLIC to effectively handle the number of cases that they were facing. They are under OMB restriction. They couldn't expand their staffs.

And the concerns that we raised at the time of the 1 percent recapitalization, we raise again here because of the accounting need, the need to, when taking over an institution, to write the institution to market and to take a charge against reserves. They are required to front-end a lot of cash. They have to go out and replenish the reserves of the fund, and they are proposing in their new plan to do that through issuance of bonds.

Our concern is with the amount of real estate involved. They are talking about $4, $5, $6 billion a year in case resolution losses. Now, if you look at losses of $4.5 to $5 billion, you are handling $15 or $20 billion of real estate annually. We are suggesting the staff isn't there to efficiently handle that amount of money, and we suggest there will be decisions made that will probably in the long run be costly to the fund.

Mr. PARRIS. Does that continue to be the case? Are they still inadequately staffed for that purpose?

Mr. LEVY. Certainly. That is unchanged. That is why we have the "406 Corporation," which will be assisting in this process. The MCP program is part of the assistance being provided to the board. But we are talking about an enormous amount of real estate disposal.

And we are saying that when we talk about fire sale, our concern is, if they have to go in and write the institution down, the inclination is to be sure that the write-down you take is deep enough so that, whatever the resolution, you don't have to comeback and take another cut at it.

Now, once you have taken that write-down, there is a sense—not urgency—but I think an inclination to be able to move it at something just above that price.

Mr. PARRIS. I could not agree more with that, Mr. Levy. And let me address the obstuse side of that coin just for a second. The National Thrift News on March 31, 1986, says the league may have underestimated the size of the problem, and you do so, consistently, in your statement today. You say $8 billion to $14 billion. The Bank Board has said $16 billion to $20 billion, and there are others, experts in this field, who say maybe twice that.

Are you satisfied that even the proposals that have been made are enough to solve the problem?

Mr. LEVY. Well, as we addressed this problem, the first and most important consideration was to try to put a number on the size of it. You can't begin to craft the solution until you are working against the number. We used an $8 billion to $15 billion range, $15 billion being a worst case. Yes, we've seen some estimates above $20 billion, but I think the interesting point is that the proposal that is now on the table that was put together by the Federal Home Loan Bank Board and the Treasury—the administration proposal—speaks in terms of about a $16 billion or $17 billion number that they're working against, which was very close to the upper end of our proposal.

Now, if you'll look at the solutions that are recommended, both the plan proposed by the administation and Bank Board and the plan that we put on the table, would both put over $30 billion against a $16 billion or $17 billion number. So we're suggesting that in many cases, if you begin to analyze it, they use worst case scenarios. They talk about asset realization, sale of assets, recovering something like 27 or 28 cents on the dollar. We think that's a pretty grim proposal. If you look at the numbers in terms of investment income available to them, they work against a very low-rate scenario.

Well, if you have a low-rate scenario, there are more institutions getting healthy. So what I am suggesting is that I think they've put a plan together that is looked at from a worst case side that will provide some $30 billion or $32 billion over 5 years against a problem that has a best estimate cost of about $16 million to $17 billion. So I think there is a substantial question.

Mr. PARRIS. But we are also impacting on a problem of $400 billion in total assets held by technically insolvent and dangerously low net worth institutions which must be insured by an insurance fund with an unobligated balance currently at $2 billion.

My time has expired.

Chairman St Germain. Mr. Wylie.

Mr. Wylie. Thank you, Mr. Chairman. I apologize for having just stepped out.

Chairman St Germain. Excuse me. I understand Mr. Kanjorski has no questions at this time. Mr. Wylie.

Mr. Wylie. Thank you, Mr. Chairman, and I apologize for having to step out for a few minutes. We have had some suggestions that if we adopt this failing bank legislation we put in some of the consumer safeguards which were in H.R. 2707, such as community reinvestment standards and concentration limits.

Would you think those provisions would be appropriate, Mr. Rideout?

Mr. Rideout. No, sir, I really think that we would feel better if we just moved ahead with this bill and got it on the books, because we think the regulators need to have the flexibility as they have outlined in their proposal, generally, to get the job done.

Mr. Wylie. Mr. Levy?

I think you might have a little different position on H.R. 2707, we did put some language in that bill pertaining to enhanced Community Reinvestment Act standards and more specifically, concentration limits on acquisitions. It's been suggested to us that we ought to have some of those provisions in this bill, especially as they refer to concentration limits.

Would you have a view on that?

Mr. Levy. I don't think it would be necessary in this bill.

Mr. Wylie. OK. How about it, Mr. Kuthy?

Mr. Kuthy. I don't think it would be necessary in this bill, and we would submit that the States have the capability already demonstrated in the interstate banking legislation that they have passed in many regions of the country to address this and tune it to and calibrate it to those circumstances which are most appropriate for those individual States.

Mr. Wylie. Do you think if we pass a bill like—and I understand that you are not convinced that we need a bill like this, but should we give the State bank supervisor veto authority over anything the Federal regulators might do?

Mr. Kuthy. We are persuaded that we ought to have the same—retain the same right that we presently have with State-chartered banks, where we work with the FDIC and arrive at a joint conclusion as to its character and work cooperatively in an attempt to try to do what is most appropriate under the circumstances, and we'd like to preserve and retain that same ability in any statute that might come out as a result of the emergency that's been suggested.

Mr. Wylie. You have stated, I think, Mr. Rideout, that you feel the State bank regulator should have the right to object?

Mr. Rideout. In the statement which was adopted by our Banking Leadership Conference on April 18, we said any emergency acquisitions under the expanded authority should be permitted only if the State banking regulator in the failing institution's home State does not object to the acquisitions. Obviously, as this unfolds, that is something that is subject to debate. Our feeling is that the

State banking supervisor should have as strong a role as practicable under the circumstances.

Mr. **Wylie**. So you think even if there is an emergency acquisition and the regulators feel there is an emergency acquistion going on that the State bank regulator should have the final say?

Mr. **Rideout**. We would be comfortable if that were the situation.

Mr. **Wylie**. Would there be a timeframe within which he should make his decision?

Mr. **Rideout**. That is not something that we've addressed specifically. That is something which our administrative committee could address.

Mr. **Wylie**. It would have to be addressed though, wouldn't it?

Chairman **St Germain**. In the bill, it says that the State bank supervisor has 48 hours; right?

Mr. **Rideout**. Yes, sir.,

Mr. **Barnard**. He has 48 hours, but he doesn't have veto authority.

Chairman **St Germain**. Well, but after 48 hours, whether he agrees or not is immaterial. Is that right, Mr. Kuthy?

Mr. **Kuthy**. That's the way it is in the——

Chairman **St Germain**. That's the way the bill is written. So that the State bank supervisors do not have the last say. They have one last time to speak, but not the last say.

Mr. **Rideout**. As I understand the bill, that's correct. They do not have the last——

Mr. **Wylie**. That's right.

Chairman **St Germain**. But they don't have the last say.

Mr. **Rideout**. Right.

Chairman **St Germain**. All they have is an opportunity to speak one more time, whether or not they're heard is a different story again.

Mr. **Wylie**. They have that opportunity under the provisions of the bill, Mr. Chairman; but Mr. Rideout has suggested that we ought to amend the bill so that the State bank supervisors would have the final say.

Mr. **Rideout**. That was the position which our Banking Leadership Conference adopted. And certainly, we——

Mr. **Wylie**. And then my followup question to that was, if they're going to have complete veto authority, how should they have to decide? Would you still use the 48-hour period? It would seem to me, personally, that 48 hours would be a satisfactory time period. Then after 48 hours, if they don't veto, or don't say anything, why then the regulators would be able to go ahead.

Mr. **Rideout**. I guess my feeling would be that a State banking supervisor ought to be able to make a determination in a period of 48 hours as to whether a situation warrants this——

Chairman **St Germain**. If the gentleman would yield. Within 48 hours, if the State bank supervisor says no, we don't feel that this warranted, then what do you feel should happen, Mr. Rideout?

Mr. **Rideout**. Well, it would be consistent with the position which our Banking Leadership Conference took that the State banking supervisor could veto.

Chairman **St Germain**. The State banking supervisor therefore has to say, why do you need the 48 hours?

Mr. Rideout. Well, you know, it's just a matter of time to study the situation.

Mr. Wylie. Let me ask you a straight-out question, Mr. Rideout. Do you think that the regulators could handle the current problems, and I think we all feel that there is a problem which needs resolution out there, maybe not in your State, but in Texas and Oklahoma and some other States. Do you think they could handle some of these problems without this enhanced authority that they are seeking?

Mr. Rideout. Well, I don't think the regulators would have asked for it if they didn't feel that they needed it, and I think, again, based on the presentation which Mr. Siedman made to us and the presentation which we had from bankers in those energy and agriculture States, that we feel that they do need the enhanced authority as generally outlined.

Mr. Wylie. That's about where I came out.

Thank you very much. Thank you, Mr. Chairman.

Chairman St Germain. Mr. Barnard. I must say, Mr. Rideout is a very politic person. You see, in answering that question, he didn't say no, the State bank supervisors don't have the capacity to handle this, what he said was, he said the Federal bank supervisors have the capacity to handle it. He's a very good politician.

Mr. Wortley.

Mr. Wortley. Thank you, Mr. Chairman.

Mr. Rideout, you commented on virtually all the major points of the regulators' proposal with one exception, the authority to acquire an entire bank holding company.

Does the ABA have a position on this?

Mr. Rideout. That was a subject which was discussed at the Banking Leadership Conference. I think there was some feeling, again, that ABA would support practical approaches to dealing with failing banks and dealing with holding companies that were made up of failing banks as well; and based on the way the bill is presented, we would have no trouble with the language with regard to bank holding companies.

Mr. Wortley. Do you think the regulators could handle the current problems without that enhanced authority?

Mr. Rideout. Well, I can't answer that question. I think you would have to ask them. Again, I think you have situations that vary from State to State, because the nature of the problem is different in different States and the nature of the banking structure is different. There may be situations that would make it easier for the regulators to handle a situation if the holding company were sold. There might be other situations where splitting up the holding company would make sense.

I think that's something that perhaps the regulators can give you more insight on than I can personally. But we think that they need some flexibility to deal with bank holding companies.

Mr. Wortley. And look at it on a case-by-case basis?

Mr. Rideout. Well, I guess I am suggesting that to have as much flexibility as possible would be to their benefit, but again, I think it is up to them to define what they think they need. And they've put forth a plan, and our feeling is that if they're satisfied with that particular approach that we would be supportive of them.

Mr. **Wortley**. Well, maybe when they appear tomorrow, we can elaborate about that one a little more.

Mr. Kuthy, you suggest that alternatives to interstate acquisitions are available. One that you mention is the use of bridge banks, where the FDIC would actually operate the bank for a period of time while the solution is worked out.

The IBAA also has suggested this concept.

What other alternatives do you have in mind.

Mr. **Kuthy**. There are a number of others that we have discussed. Frankly, some of those are variations of the bridge bank alternative. We are essentially looking at those kinds of techniques that would provide either a capital infusion, that would allow the bank to right itself, so that we might be able to save the bank rather than consider a more drastic alternative.

The variations on the bridge bank notion have not been fully explored, and that is one of the things that we feel is an important method to consider prior to the more drastic alternative of an interstate sale.

Mr. **Wortley**. Is conservatorship authority for the FDIC, the same as a bridge bank, or is that something different?

Mr. **Kuthy**. Those are similar concepts.

Mr. **Wortley**. What's the difference?

Mr. **Kuthy**. A conservatorship would only occur when there's been a certification of failure. If someone were to be able to get the stockholders of a bank to conclude that they would voluntarily surrender themselves to conservatorship, I expect we could use that technique as well.

We are not unused to, at the State bank regulator level, in working on really quite creative solutions to address problems that are common to us all as regulators.

I would not be persuaded for a moment that any of the 50 bank regulators could not, with advance notice, and with care, work toward trying to accomplish and end that is useful to local interests as well as to the insurance fund. We are all committed to that.

Mr. **Wortley**. Your creative solutions, I hope, do not involve creative accounting practices.

Mr. **Kuthy**. We would hope not, sir. [Laughter.]

Mr. **Wortley**. Mr. Levy, since the Federal Home Loan Banks are under the FSLIC recapitalization proposal funneling $3 billion of the Banks' surplus to the FSLIC, if everything should unravel, who directly bears the loss?

Mr. **Levy**. The loss of that $3 billion investment?

Mr. **Wortley**. Yes.

Mr. **Levy**. Well, my latest understanding is the accountants will probably insist that when the investment is made, there is going to have to be a writeoff of that money on the books of the district banks. I mean, let's keep in mind, that we are talking about——

Mr. **Wortley**. Banks will want to get their money back, won't they?

Mr. **Levy**. Well, sure. The proposal does suggest that they could have an oportunity to get their money back sometime in the future. In the interim, I believe the accountants are going to insist on a writeoff. And that is one of the issues that we are concerned about.

Mr. **Wortley**. I would imagine you are concerned about it.

Mr. **Levy**. I would underscore, however, that the primary capital of the bank system is not involved. The bank system is very well-capitalized. What we are talking about are the $1.8 billion in retained earnings which would be moved away, leaving the bank with cost to 8 percent capital, and the other 1.2 comes over a period of time in the 20 percent of earnings that are now required to be retained. Those would be used on an annual basis to contribute to the fund to reach the $3 billion number.

Mr. **Wortley**. I thank you very much. My time has expired.

Chairman **St Germain**. Mr. Kuthy, did I understand you to say that the states in their regional compacts included concentration, as well as community reinvestment provisions?

Mr. **Kuthy**. I am sorry, Mr. Chairman. I didn't understand your question.

Chairman **St Germain**. Did I understand you to say earlier to Mr. Wylie that the States, in adopting regional compact legislation—I think that is what you meant by interstate legislation—have included concentration in community reinvestment provisions?

Mr. **Kuthy**. Yes, sir. Many States have.

Chairman **St Germain**. Would you be good enough to provide those for the record, because my staff is not aware of it?

Mr. **Kuthy**. Illinois, Indiana, Michigan. I have not read the Wisconsin bill, but I have been advised that its recent passage included a potpourri of many of the qualifications from Illinois, Indiana and Michigan, as well.

Chairman **St Germain**. So that is Indiana, Illinois, Michigan and what?

Mr. **Kuthy**. And Wisconsin.

Chairman **St Germain**. And Wisconsin.

Mr. **Kuthy**. Yes, sir. There may be others. Those are the ones I am most familiar with.

Chairman **St Germain**. OK. That's four out of how many States that have entered into regional compacts?

Mr. **Kuthy**. In my region, sir?

Chairman **St Germain**. In the country?

Mr. **Kuthy**. I can't answer that question, specifically.

Chairman **St Germain**. Well, the number is 30. So out of 30, four have addressed the concentration and reinvestment.

Mr. **Kuthy**. I guess I would only commend to the chairman that these issues have become more prominent as States exercise the interstate power that they have had. The most recent entrants are the ones who seem to be adopting these standards. I am not sure I can totally explain the reason for that at this point, but it appears to be that the most recent entrants are the ones who are doing this.

Chairman **St Germain**. Do you really anticipate that there will be changes in those others States that were prior entrants?

Mr. **Kuthy**. I guess that would be a matter difficult to speculate. There are so many things that went into the development of those compacts that anteceded the present thinking and the present Supreme Court decisions that I would imagine those would have to be thought of very carefully, and many steps have been taken, and many sales have occurred under conditions that are different than might well be the case in the future.

Chairman **St Germain**. Like Mr. Rideout, you are very good at answering but not answering, which I compliment you for. You're good witnesses. Mr. Dreier.

Mr. **Dreier**. Thank you very much, Mr. Chairman.

Our goal with this emergency legislation is obviously that of trying to avoid liquidation, and I personally have a problem with any threshold at all, and I would like to ask Mr. Kuthy what his thought is specifically about the $250 million threshold.

Mr. **Kuthy**. We have suggested that if such legislation were to be passed that the threshold ought to be a double standard threshold which would provide more of the flexibility that apparently the FDIC requires, a threshold of either a $500 million or the largest four banks in any given State.

This would provide, we think, adequate parameters to handle those kinds of problem situations that may be out there, and we would hasten to add that since the passage in October of 1982 of the failed bank interstate legislation that emergency power has been exercised only once.

So removing from harm's way that number of institutions we think is probably appropriate.

Mr. **Dreier**. Mr. Rideout, what are your thoughts on the threshold?

Mr. **Rideout**. Well, our banking leadership conference indicated that perhaps some flexibility could be useful, to go below the 250 in certain cases if they required——

Mr. **Dreier**. What would some of those specific cases be?

Mr. **Rideout**. Well, in answer to a previous question I mentioned the case where you might have very few banks in a given State that were above $500 million assets, and that might also be a troubled State. Therefore they would not have the wherewithal, for instance, to merge a $150 million or a $200 million bank, and in that case rather than having the bank closed up for lack of an alternative solution it would be nice to have the flexibility to be able to sell that bank to a bank in a neighboring State if there were a regional compact in place or otherwise to sell it to a bank somewhere else in the country.

Mr. **Dreier**. But you both feel it is important to have some sort of threshold, then?

Mr. **Rideout**. Well, we certainly are not objecting to the $250 million threshold that is set forth in the bill. We would be supportive of that.

We would only go forward and say that the Congress and the regulators might want to explore some additional flexibility to deal with smaller banks from time to time.

Mr. **Dreier**. Mr. Levy, there are a number of people who have responded to the Bank Board's proposal of doubling the capital requirements over a 6-year period as potentially throwing a number of thrifts into insolvency.

What is your response to that?

Mr. **Levy**. Well, I think that some of the public comments I have made in the past 6 months since I have served in this position probably encouraged the Board to come forward with a proposal.

I believe strongly in increased capital requirements. We are going to look very carefully at the timeframe and see what kind of problems it creates.

We are concerned about the ability of members to meet the test, but I think the underlying concern is to increase the level of capital to provide that extra cushion to the fund, and I think it is of such paramount importance that it is an issue that we have to deal with directly.

Mr. **Dreier**. So you don't think that it opens a threat for any kind of insolvency for any existing thrifts?

Mr. **Levy**. Not insolvency. I don't think the problem is one of insolvency. I think the problem that has been suggested is one of how to deal with the public scrutiny of being suddenly placed in a category of noncompliance.

Supposing an institution is at 3 percent, the level goes to 3.5 at year-end, and they have only achieved 3.4. The idea of being identified as having not reached the next level is really the problem. It is not insolvency, but it is one of being identified as being identified as being technically not in compliance.

All of it, though, underscores the point that we are moving them toward higher capital levels.

Mr. **Dreier**. Great.

Thank you very much, Mr. Chairman.

Chairman **St Germain**. Mr. Bereuter.

Mr. **Bereuter**. Thank you, Mr. Chairman.

Gentlemen, thank you for your testimony. I have a couple of quick questions.

Mr. Rideout, briefly, you state that the ABA's position is for a 3-year position versus the 5-year that is in the original bill.

Briefly, what is the rationale for that period?

Mr. **Rideout**. I don't know that there is any specific rationale other than that is a comfortable timeframe we feel for reviewing the situation.

Hopefully, the crisis which we have in the energy area and in the ag area will have righted itself by then, and it might very well be at the end of a 3-year period that this kind of power would not be necessary, and we think the Congress would want to look at it at that time.

Mr. **Bereuter**. Thank you.

A few minutes ago in response to Mr. Dreier, you indicated that in some States not many banks would be over the $250-million threshold. Indeed, there apparently are four States that don't have any banks over that.

The recommendation was made several days ago here that the top four banks in those States be eligible.

Do you have any reaction to that?

Mr. **Rideout**. We certainly wouldn't have any difficulty with that, and in fact I think in our written statement we indicated that that could be a useful tool and a useful definition.

Mr. **Bereuter**. When you have an emergency acquisition, additional banks may be acquired in the three largest metropolitan areas.

That sounds very arbitrary to me. That varies so much from State to State. Indeed, some States don't have three metropolitan areas. In Texas you are talking about a very different situation than you are, for example, in another large population state, since Texas has so many metropolitan areas.

Why? Do you have any reaction to that? Is there a more favorable way of approaching that, and why is it necessary as an incentive for both assisted and unassisted takeovers?

Mr. RIDEOUT. Well, I have not had any direct discussions with the regulators as to why that specific language was put in place. I believe the way it is written that out-of-State acquirers coming in would only have that same power if the banks in that State had that power as well, so that the local banks would need to have that flexibility.

The other thing which we indicated in our testimony is that we think there might need to be some other sort of protection in case you had a serious situation where the banks in that State were not in good shape and the new bank could come in and in effect have a competitive advantage over the other banks. The indication was that perhaps some sort of phase-in period could be provided in other words, if an outsider acquired a bank and were to expand it couldn't happen for some period of time, 18 months, 24 months, whatever might seem like a suitable number.

Mr. BEREUTER. Mr. Kuthy, in your testimony you indicate that the conference does not believe the enhanced authority requested by the regulators is necessary to maintain the public confidence.

Is there any expanded authority that you do think would be appropriate at this time?

Mr. KUTHY. We have submitted some recommendations that if the Congress concludes that such authority is necessary and that a case has been made by the FDIC to support that need, that would accommodate to the circumstances that we have outlined relative to the contravention of Congress' longstanding policy regarding interstate banking.

Mr. BEREUTER. Is that a part of your testimony submitted today?

Mr. KUTHY. Yes, sir.

Mr. BEREUTER. All right.

The IBAA last week suggested that in any failing bank case where the stockholders of a bank favor interstate acquisition they should not receive compensation for their stock, and now you come up with a recommendation about limiting so called windfall profit taking to one-third of the net book value at the time of sale.

How do you arrive at that figure? Why is that a fair recommendation or a reasonable recommendation?

Mr. KUTHY. Well, there will be no concurrence by a group of shareholders to wipe themselves out voluntarily, and it is our conclusion that there should be some appropriate amount which would cap the situation so that there will be no windfall profits because of the premium that is very likely to be paid for an interstate transaction.

We are not interested in rewarding either indifference or whatever may have caused that particular bank to have gotten into the difficulty that it has gotten into.

Mr. BEREUTER. Yes. But why one-third? Why not one-half? Why not one-eighth?

Mr. **Kuthy**. We think that the one-third number is appropriate under the circumstances to provide sufficient inducement, if that is necessary, to obtain the shareholders' concurrence, but at the same time not provide a premium.

Mr. **Wylie**. Would the gentleman yield?

Mr. **Bereuter**. Have you sat down and thought about this in balance?

Mr. **Wylie**. Would the gentleman yield?

Mr. **Bereuter**. Yes, I would be pleased to yield.

Mr. **Wylie**. We may have reached an area of agreement here, Mr. Chairman. I have a feeling that Citicorp and Chase and some of the other big banks would like an arrangement like that. The IBAA testified in favor of it, and you are testifying in favor of limiting the amount which the stockholders can receive in compensation. I hope you get the point I am making.

How would you arrive at figures like that, and how would there be any incentive for shareholders to sell to out-of-State banks if they couldn't receive some compensation?

Mr. **Kuthy**. I think that is the rhetorical point, Mr. Wylie. We are not interested in supporting the contravention of the interstate proscriptions that many states have, and we are anxious instead to have positive inducements for an in-State acquisition so that there will be no opportunity for profit to be made on the basis of an already longstanding congressional policy.

Mr. **Wylie**. Thank you.

Mr. **Bereuter**. I understand the reason for inducement. It is just why that figure?

I would just say in concluding, since my time has expired, the more I see this legislation, the less I like it.

Chairman **St Germain**. Mr. Barnard.

Mr. **Barnard**. Mr. Levy, in your testimony I believe you indicated that you were operating from some disadvantage as far as the FSLIC Enhancement Act was concerned. Because the draft of no bill has been offered, we likewise are operating under that same limitation.

But I did notice in the Washington Financial Reports of recent date that the White House Economic Policy Council had signed off on April the 14th on a plan to shore up the troubled Federal Savings and Loan Insurance Corporation and that they went on to say that they are hopeful that this proposal will win the support for legislation that will be submitted to Congress.

But even in anticipation of that proposal—and I believe you alluded to it on page 8 of your testimony—aren't we dealing with a very, very sensitive problem here as far as the Financial Accounting Standards Board is concerned?

Mr. **Levy**. Well, the Financial Accounting Standards Board has been occupying more and more of their time with savings and loan issues. It comes in a number of areas.

I indicated earlier that there is a concern about how the investment by the district banks would be treated. On a much broader basis, there is an exposure draft out on loan fees. There is one expected on bad debt reserves, both of which would have a substantial impact on the resolution of the problem.

Mr. **Barnard**. But the FSLIC is relying heavily on the fact that the Home Loan Bank Boards would be helping to put more capital in the FSLIC.

Am I incorrect there?

Mr. **Levy**. That is absolutely correct.

Mr. **Barnard**. And now we find out that the Federal Accounting Standards Board says that they are going to have to expense that item as opposed to being an investment, and isn't that going to handicap their leveraging of further bonds?

Mr. **Levy**. Well, at this stage it is not FASB that has issued that opinion. It is one of the big eight accounting firms, and it is a question of how the investment is handled on the books of the district bank.

In fact, the $3 billion—$2- to $3 billion—would be moved into a finance subsidiary and would be cash available to use to leverage. It wouldn't interfere with their ability to carry out the proposal to issue the bonds because the cash is there. This is a matter of the treatment of the investment on the books of the district bank.

Mr. **Barnard**. But hasn't that got to be resolved before we can consider legislation?

Mr. **Levy**. Well, we would hope that it would be. It is our hope that it be resolved before it goes forward.

Mr. **Barnard**. Mr. Levy, last week the National Association was testifying about bills H.R. 1680 and H.R. 2444. They indicated some very, very, I think, severe criticisms of these bills, and I would just read from their testimony, where it says:

> As can be seen from these brief summaries, both H.R. 1680 and H.R. 2444 are far-reaching legislative proposals containing some provisions that are quite controversial; for example, the federal override of state powers and the so-called thriftness test.
>
> They also include some beneficial provisions, such as enhanced third party payment powers for thrift institutions.

In other words, they indicated that both of these bills are somewhat flawed with controversy.

Does the U.S. League agree with that?

Mr. **Levy**. No, I think the controversy is in their view of the bill.

For example, we have supported a qualified thrift lender test. We supported most of H.R. 20. I think, throughout, that the National Council has not been supportive of imposing a qualified thrift lender test. Our position is in support of a test, which is part of our ongoing commitment to housing.

Mr. **Barnard**. Do you also support the tandem clause in H.R. 20?

Mr. **Levy**. We have some problem with the tandem clause. You have probably identified the one area where we are having difficulty.

Mr. **Barnard**. On page 18 of your testimony, in the last paragraph, you say that ". . . the myth has been created that any closing of the Bank Holding Company Act loophole must be accompanied by severe limitations on acquisitions of savings institutions," so forth and so on.

Then you went on to talk about the fact that there had been no abuses.

Would you mind just elaborating briefly on that? What do you mean by that? Are you supportive of expanded powers for unitary thrift savings holding companies?

Mr. **Levy**. No, no, that is not what we are saying. We are saying that the expanded powers that were granted to the unitary holding companies have not produced abuses. We are not asking for that to be expanded.

Mr. **Barnard**. I didn't mean that, but you are talking about as those expanded powers are in place you support that?

Mr. **Levy**. Yes, we do.

Chairman **St Germain**. Mr. Carper, I understand that you have a brief question that you would like to propound to the panel and that you might be asking them to reply in writing.

Mr. **Carper**. I do. Thank you, Mr. Chairman.

Gentlemen, thank you for your testimony today. Rather than ask you to respond on the record, what I am going to do is ask each of you to please respond in writing with some comments from your organization on the advisability of our perhaps attaching H.R. 3567, the Depository Institution Examination Improvement Act, as an amendment to this piece of legislation.

Let me just briefly describe what that legislation is all about.

A number of us are concerned on this committee—in fact, about three-fourths of us are concerned enough to have cosponsored legislation that says in a time of deregulation we don't necessarily want to provide for less examination, less supervision. In a time faced with Gramm-Rudman, in which we may be forced to actually cut back the numbers of examiners, we should instead be increasing the number of examiners. Instead of cutting back on the quality of the training that they receive, we should be improving the quality of that training.

H.R. 3567 attempts to address that problem, the dilemma that I think we face. I would welcome in writing your comments on it.

Thank you, Mr. Chairman.

Chairman **St Germain**. Thank you, Mr. Carper.

Mr. Levy, in your testimony you described the thrift problem as an $8 billion to $15 billion problem. That is quite a spread.

The administration seems to be talking about amounts that are much less than that—or rather much larger than that, almost twice that amount.

How do you reconcile the difference between what you testify to and what the administration is telling us?

Mr. **Levy**. Well, our $8 to $15 billion figure of course is a——

Chairman **St Germain**. That is billion, not million.

Mr. **Levy**. Billion.

Chairman **St Germain**. Billion. But that is a big difference.

Mr. **Levy** [continuing]. Has a lot to do with——

Chairman **St Germain**. You are an S&L man, right?

Mr. **Levy**. That is right.

Chairman **St Germain**. There is a lot of difference between—

Mr. **Levy**. Seven billion dollars is a lot of money.

Chairman **St Germain**. Yes.

Mr. **Levy**. I think if we look at the number—I have some spread sheets out of the proposal that the Bank Board has released, and the number is not substantially larger. You have to look very carefully. They are talking—they have a 1987 to 1993 period, and they show a case resolution total of about $25, $26 billion. But that has to be reduced by what they call an asset realization. That is the sale of the assets that they have taken in those case resolutions, and that is close to $9 billion.

So the net amount is $17 billion, which is very close to the number—the upper end of our number.

And I might add——

Chairman St Germain. Well, you know, I don't have that spread sheet in front of me; how long does it take to sell those assets?

We're still selling assets from the USMB of San Diego.

Mr. Levy. I think they finally closed that case.

Chairman St Germain. Well, maybe but——

Mr. Levy. 13 years, 14 years.

Chairman St Germain. 14 years, you know. So are you taking the time element into consideration?

Mr. Levy. Well, I think if you look at their resolution numbers, they are assuming a very, very modest amount of sales in the first few years. I think the real point is that they are looking at something like a 27 cents on the dollar realization, but the fact is, taking that worst case scenario with a modest spread over the years out through 1993, the fact is that the size of the problem that they describe is about $17 billion. So it's not bigger than the number that we use on the higher end.

Chairman St Germain. OK.

Mr. Levy. And I again point out that Board Member Hovde was interviewed on Friday and commented again that the problem—he was quoted in the Wall Street Journal as describing this as a $16 billion resolution cost. So I think we are pretty close on the upper end.

Chairman St Germain. All right. I'll ask all three of you, how would you rate the comparative urgency of legislation? The first is the legislation H.R. 4701, emergency acquisition. Then we have H.R. 20, which has been languishing in the cradle of the Rules Committee for a period of time, like a babe in an isolette.

Mr. Rideout, on a scale of 1 to 10, how do you rate H.R. 4701 and H.R. 20, as to urgency?

Mr. Rideout. Well, I think that H.R. 4701, the legislation we are considering today—on a scale of 1 to 10 is a 9.

Chairman St Germain. And H.R. 20?

Mr. Rideout. Certain provisions of H.R. 20——

Chairman St Germain. You're not going to like H.R. 4701 when it comes up. It's not going to come up perfect, so don't worry about the "certain provisions: of H.R. 20." [Laughter.]

Mr. Rideout. Let's give it a 7½ in terms of urgency.

Chairman St Germain. 7½. Mr. Kuthy?

Mr. Kuthy. Closing the nonbank bank loophole, we have said on many occasions is the No. 1 priority for State bank supervisors.

Chairman St Germain. So you would rate that higher than H.R. 4701, the emergency acquisition?

Mr. Kuthy. Yes, sir.

Chairman St Germain. Mr. Levy.

Mr. **Levy**. We have to rate H.R. 20 higher, because closing the nonbank bank loophole has such a substantial impact on the resolution costs at the FSLIC, that it has to stand ahead.

Chairman **St Germain**. All right.

You know, I am going to make it clear that my mind is still open, but we—Mr. Rideout, you quoted stories in the press that gave you to understand that the situation is grim, but I sent down to you a press story, the Washington Post, April 2, 1986. The Chairman of the FDIC said yes, the plunging price of oil is unlikely to trigger major bank failure in Texas but allows it is not out of the realm of possibility.

Later on, Seidman said how low the price of oil goes and how long it stays there will largely determine how serious the Texas and other energy State banks will be hurt. if oil should fall to $9 a barrel and stay there for 2 or 3 weeks, then move back to $15 or $20, then there will not be a material effect on the system.

On the other hand, if prices remain low for an extended period of time, the pressure on banks will be greater, Seidman said, but under any foreseeable circumstances, the fund is more than adequate, he said.

So you see, it does give some of us a little bit of a dilemma. I bet Mr. Kuthy and his conferees might have read the Seidman quote as well. Right, Mr. Kuthy?

Mr. **Kuthy**. We did, indeed, sir, on April 2, as a matter of fact, when it appeared in the Washington Post.

Chairman **St Germain**. My time is expired. Mr. Parris.

Mr. **Parris**. Thank you, Mr. Chairman.

I would like to revisit the question the chairman addressed just a moment ago, and when my time expired in the previous round. And that is, Mr. Levy, and this is just a comment. We'll see, history will prove us, I suppose, will tell us.

The most important question, the most important issues in this whole dilemma, it seems to me, is whether the recapitalization legislation in its final form, whatever that may be, whether or not the $15 billion to $25 billion will be enough to cover the problems that the Bank Board has determined and those that it has yet to uncover, because the action, as you know, in the resolution of these things, has been not what some of us would like to have in the way of expedition. So I am skeptical, frankly, as one Member of this Congress and this committee, whether when you've got, understandably, $400 billion worth of insolvent and inadequate net worth institutions, whether or not the present value cost of just $8 billion to $15 billion as you estimate or even the $22.5 billion which Chairman Gray testified to us 2 or 3 months ago, now he says is $25 billion is enough to cover the problem. This thing just keeps going in the wrong direction, in my view.

I will concede to you that I am the kind of person who thinks there is no such thing as one termite, and that we are going to have a bigger problem than any of us understands up to now.

Let me just very quickly go back to the subject, gentlemen, that Mr. Wortley pursued a moment ago. That is that the equity funding from the Federal home loan banks to the new funding corporation in the scheme of things here, will be—I think Mr. Levy or one of you gentlemen were talking about the equity of something like

$3 billion has been suggested, and there are a number of us who anticipate that the so-called nonredeemable capital will be in the neighborhood of $8 billion to $12 billion. Not that is an important set of words there. "Nonredeemable. That means we are not going to pay you back. We are going to take $8 billion to $12 billion from the financial markets, a transaction financed by a loan from the district banks, and put the money somewhere.

Now if that is true, now that's an anticipatory statement, if that is true, that is a serious deterioration of their capital, is it not?

Would any of you gentlemen care to——

Mr. **Levy**. Could I address that?

Mr. **Parris**. Please.

Mr. **Levy**. Let me say that in both plans was a clear bottom-line concern that nothing be done to disturb the credit rating of the bank system. The bank system has over $80 billion in consolidated obligations.

If we were to deplete the capital to that extent, the added cost that we would pay on consolidated obligations would wipe out any benefit of any plan. There is no plan that calls for taking more than $3 billion from the bank system, which would still leave that bank system capitalized close to 8 percent.

Mr. **Parris**. Have you seen the final version of the Treasury proposal that we are going to get on Thursday, Mr. Levy?

Mr. **Levy**. Well, I don't know if something has changed in the last couple of days. I would say that if there is any proposal to intrude to the extent of $8 billion to $9 billion, the bottom line cost to the plan wouldn't work out, because the added cost on consolidated obligations would be a serious problem.

So I——

Mr. **Parris**. Well, that's the only quarrel I have with the position that has been taken, that we are going to infuse $15 billion to $25 billion into FSLIC, your comments earlier, so that they can work out 15 to 25 in cases, but we are only going to provide $3 billion of equity, and we are going to go to the money markets, into the bond markets for additional fund, but there's an $8 billion or $10 billion, $12 billion gap in there, and that is where the quote "nonredeemable"—well, that's like me loaning money to my kids. I'd never see it again. [Laughter.]

Mr. **Levy**. I could run the number quickly for you.

Mr. **Parris**. Please. I would appreciate that, but we just don't have the time. My time is going to expire.

Chairman **St Germain**. You don't loan money to your kids; you give it to them. [Laughter.]

Mr. **Parris**. That's true, but they like to call it euphemistically a loan, and I play that game with them.

Let me just—and I apologize, Mr. Levy, but the time constraints are enormous for all of us or burdensome, I mean.

Mr. Rideout, you reiterated on several occasions here today ABA's strong support of H.R 20, and I concede to you that I'm modestly uncertain about the ABA's position on the so-called interstate bill, H.R. 2707.

Where are you at this point on that bill?

Mr. **Rideout**. On the interstate——

Mr. **Parris**. On H.R. 2707, yes.

Mr. **Rideout**. The 5-year trigger.

Mr. **Parris**. Yes, the so-called interstate bill.

Mr. **Rideout**. The interstate bill?

Mr. **Parris**. Yes.

Mr. **Rideout**. That is an issue which has been addressed by our Banking Leadership Conference, and we simply have not been able to arrive at a position on that. So we do not have a position on it at this time.

Mr. **Parris**. Thank you very much.

Chairman **St Germain**. The jury is deadlocked. Mr. Barnard.

Mr. **Barnard**. Thank you, Mr. Chairman.

Mr. Rideout, the ABA tends to feel that the definition of a "failing bank" situation is one in which a bank's capital is threatened, and I believe your testimony indicated that liquidity insolvencies—we call them liquidity crisis said that those currencies could be probably remedied at the Fed discount rather than an interstate merger.

Well, there have been instances where these liquidity insolvencies had not been able to save institutions, you know, through Fed borrowings. And I was wondering what you think about a failing bank definition which would along thse lines, that circumstances which would present the regulators with a failing bank situation, which would be an inability of a major bank holding company to continue to obtain funding for money market sources. That is, other banks, major financial corporations and institutional portfolio managers placing funds in CD's and other liquidity instruments.

Now this was the problem, I believe that was present with the Continental Illinois situation.

So my three questions would be this:

Would ABA deny the regulators the flexibility to step in earlier in the crisis before the bank's capital is completely gone?

Two, wouldn't that ability better protect the integrity of the FDIC fund?

And three, wouldn't it also enhance depositor confidence in the system as a whole, prevent last minute depositor runs, and in effect, cushion other institutions in the area from a similar failure of confidence?

Mr. **Rideout**. Well, those are a lot of questions.

I am not certain that I can give you an answer of what ABA's position would be on that proposal. We would like very much to take that proposal to our administative committee of our government relations council, which meets in ten days, and we would be happy to furnish you with a response.

I would say to you that the notion of a liquidity crisis not being necessarily a failing bank situation and being handled by the Federal Reserve as opposed to the Federal Deposit Insurance Corporation is one which needs some discussion and needs looking into.

I think what is critical, what is behind our notion here with respect to the liquidity crisis, would be to guard against anyone who might decide to try to cause a liquidity crisis, to, in effect, have a liquidity crisis trip into a failing bank situation, so that a bank which fundamentally wasn't in that bad of a shape, would be, in effect, on the auction block.

This again, is one of these things needing to have protection on both sides.

I think we want to make sure the regulators are protected. We also want to make sure that the banks are protected.

Mr. BARNARD. Do you think that we ought to put in the law that strict interpretation of just capital, that they could only act when the capital had been exhausted?

Mr. RIDEOUT. We think that that's a notion around which some sort of a structure can be built. I think there is need for some more.

Mr. BARNARD. If you don't trust the regulators, couldn't they likewise ask you to charge off some loans, which would deplete your capital and in the same way get around this inflexibility?

Mr. RIDEOUT. Yes, that possibility exists. One would hope in the case of the regulators that there's a good measure of good faith in this whole undertaking. But again, I think there is that concern.

Mr. BARNARD. This is one of the real deficiencies of the legislation right now, trying to define—which you will acknowledge—what is a failing bank.

Mr. RIDEOUT. Right. We would agree.

Mr. BARNARD. And I think it would be interesting if the ABA would consider this other idea, as far as—other than capital or maybe capital and/or another provision.

Mr. RIDEOUT. We would be happy to do that, and as I indicated, our administative committee will be meeting on the 21st and 22, and we will address it at that time and give you some thoughts back.

[Information to be furnished can be found in the appendix.]

Mr. BARNARD. Mr. Kuthy, is the State of Texas a member of your association?

Mr. KUTHY. Yes, sir.

Mr. BARNARD. And it is your opinion from the superintendent of banks—what's his name?

Mr. KUTHY. I'm sorry. Whose name?

Mr. BARNARD. The superintendent of banks of Texas?

Mr. KUTHY. That's Mr. James Sexton.

Mr. BARNARD. Mr. Sexton. In other words, it's your understanding in your association that he has indicated that there is no need for this bill?

Mr. KUTHY. Sir, if he has any disagreement with the approach that we have taken here he is free, as is any of the 50 States——

Mr. BARNARD. No——

Chairman ST GERMAIN. The Chair might say to the gentleman from Georgia, Mr. Sexton will be testifying on Thursday.

Mr. BARNARD. Well, I think that is very beneficial. It is going to be very helpful to us, but I was just wondering whether CSBS has taken time to get his opinion, before your testimony today.

Mr. KUTHY. We have reviewed this testimony with him. He has been submitted a copy of this testimony. He's participated in all the discussions we have. He is president-elect of our organization, sir.

Mr. BARNARD. And it is your opinion that his position is that he does not favor the bill.

Mr. **Kuthy**. If there are inconsistencies in the approach that we have taken, he will review those with you in his own testimony.

Mr. **Barnard**. That is not what I asked you, though.

Mr. **Kuthy**. I understand, sir. I can't tell you what——

Mr. **Barnard**. See, you got us at a disadvantage. You've seen the testimony; we haven't. So therefore, I mean——

Mr. **Kuthy**. No, sir, I have not seen his testimony.

Mr. **Barnard**. I thought that's what you just said.

Mr. **Kuthy**. No, sir, I did not say that. I said he has seen the testimony we have prepared here and has been submitted on behalf of the Conference of State Bank Supervisors. He has been fully privy to the discussions that we have had.

Mr. **Barnard**. Would his opinion have any merit with the CSBS?

Mr. **Kuthy**. It has a great deal of merit with us, sir.

Mr. **Barnard**. Thank you.

Chairman **St Germain**. Mr. Wylie?

Mr. **Wylie**. Thank you, Mr. Chairman.

Mr. Levy, Mr. Gray was up and talked in terms of the need to recapitalize FSLIC, and as a matter of fact, there is a recapitalization proposal going forward right now through the Federal home loan banks, and Mr. Parris a little earlier talked about the need to recapitalize the fund. I have in front of me a copy of the United States League of Savings Institutions task force report, and I note that you were the chairman of that task force. And on page 24, it says:

"The task force strongly opposed any recapitalization proposal for the FSLIC." Strongly opposed any recapitalization proposal. That is fairly broad language.

Would you tell me what that means?

Mr. **Levy**. Yes. At that time, that was kind of a term of art. That referred back to the plan that surfaced about a year ago, which would have called for a flat 1 percent of our assets to be transferred over to FSLIC. We don't oppose a recapitalization. We oppose specifically the form of recapitalization which would have moved $9 billion over front end and not on a phased schedule extending over a period of time.

Mr. **Wylie**. That referred specifically to the 1-percent premium charge then, at the time.

Mr. **Levy**. Yes.

Mr. **Wylie**. Then that should be revised to say "any recapitalization proposal which calls for a 1-percent premium charge?

Mr. **Levy**. No, because we support recapitalization.

Mr. **Wylie**. Yes, I would think so.

The National Council of Savings Institutions testified last week that FSLIC's premiums, combined with special assessments, are almost twice as much as FDIC premiums. And I asked at the time, why haven't we seen a considerable number of institutions switching from FSLIC to FDIC, and some did in Ohio, as you know.

Why haven't we seen that?

Mr. **Levy**. Well, I would point out that on an actual dollar basis, FSLIC-insured institutions paid more in premiums in 1985 than did FDIC institutions, and they are 2½ times their size. So, in point of fact, yes, there is a major difference.

I think the fact that you haven't seen a rush for the door is a sense that we were putting together a plan that would define the cost.

If what we are going to put on the table is a blank check with no defined end to it, and open-ended totally, I think you are going to find people reconsidering their decision. I think they are waiting to see the results of this plan. And they are going to make their judgments at that time, because there are a substantial number of—I come from a state which has 60 percent of the institutions—everybody reports on a cap only basis. There is no accounting, other than, permitted in the State of Wisconsin. And over 60 percent have tangible net worth over 60 percent. And there are many institutions around the country that are well capitalized.

Now those people are waiting to see what the price is going to be.

Mr. Wylie. Does the Federal Home Loan Bank Board have the authority to prevent institutions from withdrawing from FSLIC?

Mr. Levy. I don't believe they do.

Mr. Wylie. I don't think they do.

Mr. Levy. I think they can move. And of course, there have been some moves, but you are right, very few.

Mr. Wylie. Thank you, Mr. Levy. Thank you, Mr. Chairman.

Chairman St Germain. Gentleman, we want to thank you for your testimony. There are those of us who have additional questions. We will submit them to you in writing and ask for your cooperation.

[Information to be furnished can be found in the appendix.]

Chairman St Germain. The subcommittee stands in recess until tomorrow morning.

[Whereupon, at 4:15 p.m., the hearing was adjourned.]

[Letters of invitation to witnesses, prepared statements and other material follow in the appendix.]

APPENDIX

FERNAND J. ST GERMAIN, RHODE ISLAND, CHAIRMAN
FRANK ANNUNZIO, ILLINOIS
CARROLL HUBBARD, JR., KENTUCKY
DOUG BARNARD, JR., GEORGIA
JOHN J. LaFALCE, NEW YORK
MARY ROSE OAKAR, OHIO
BRUCE F. VENTO, MINNESOTA
ROBERT GARCIA, NEW YORK
CHARLES E. SCHUMER, NEW YORK
BARNEY FRANK, MASSACHUSETTS
RICHARD H. LEHMAN, CALIFORNIA
JIM COOPER, TENNESSEE
BUDDY ROEMER, LOUISIANA
MARCY KAPTUR, OHIO
BILL NELSON, FLORIDA
PAUL E. KANJORSKI, PENNSYLVANIA
BART GORDON, TENNESSEE
THOMAS J. MANTON, NEW YORK

U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE
OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
NINETY-NINTH CONGRESS
ROOM B-303 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6051

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STEWART B. McKINNEY, CONNECTICUT
NORMAN D. SHUMWAY, CALIFORNIA
BILL McCOLLUM, FLORIDA
GEORGE C. WORTLEY, NEW YORK
DAVID DREIER, CALIFORNIA
STAN PARRIS, VIRGINIA
MARGE ROUKEMA, NEW JERSEY
DOUG BEREUTER, NEBRASKA
STEVE BARTLETT, TEXAS
TOBY ROTH, WISCONSIN

April 30, 1986

Mr. Gerald J. Levy
Chairman
U.S. League of Savings Institutions
1709 New York Ave., N.W. Suite 801
Washington, D.C. 20006

Dear Mr. Levy:

To assist this Subcommittee in the discharge of its responsibilities, you are requested to appear on Tuesday, May 6, 1986, in Room 2128 Rayburn House Office Building at 2:00 p.m., to provide testimony to the Subcommittee on proposed legislation by the Federal regulatory agencies on emergency interstate acquisitions and related matters. More specifically, you are asked to testify on the Financial Institutions Emergency Acquisitions Amendments of 1986, the legislation proposed by the Federal regulatory agencies, and on current proposals for the recapitalization of the FSLIC and enhancement of the supervisory authority of the Federal Home Loan Bank Board.

In accordance with Committee Rules, please deliver 175 copies of your prepared statement to Room B303 Rayburn House Office Building twenty-four hours in advance of your scheduled appearance. Your statement in its entirety will be included in the hearing record and, if delivered as requested, the statement will be made available to all Subcommittee Members in advance of the hearing. To provide all Subcommittee Members with sufficient time for questioning, the oral presentation of your prepared statement must be limited to ten minutes.

Sincerely,

Fernand J. St Germain
Chairman

FJStG:dTv

FERNAND J. ST GERMAIN, RHODE ISLAND, CHAIRMAN
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STEVE BARTLETT, TEXAS
TOBY ROTH, WISCONSIN

April 30, 1986

Mr. Mark W. Olson
President-Elect
American Bankers Association
1120 Connecticut Ave., N.W.
Washington, D.C. 20036

Dear Mr. Olson:

To assist this Subcommittee in the discharge of its responsibilities, you are requested to appear on Tuesday, May 6, 1986, in Room 2128 Rayburn House Office Building at 2:00 p.m., to provide testimony to the Subcommittee on proposed legislation by the Federal regulatory agencies on emergency interstate acquisitions. More specifically, you are asked to testify on the Financial Institutions Emergency Acquisitions Amendments of 1986, the legislation proposed by the Federal regulatory agencies, and related matters.

In accordance with Committee Rules, please deliver 175 copies of your prepared statement to Room B303 Rayburn House Office Building twenty-four hours in advance of your scheduled appearance. Your statement in its entirety will be included in the hearing record and, if delivered as requested, the statement will be made available to all Subcommittee Members in advance of the hearing. To provide all Subcommittee Members with sufficient time for questioning, the oral presentation of your prepared statement must be limited to ten minutes.

Sincerely,

Fernand J. St Germain
Chairman

FJStG:dTv

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U.S. HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE
OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
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ROOM B-303 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6051

[illegible]

May 2, 1986

Mr. Eugene W. Kuthey
Vice President
Conference of State Bank Supervisors
1015 Eighteenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Kuthey:

To assist this Subcommittee in the discharge of its responsibilities, you are requested to appear on Tuesday, May 6, 1986, in Room 2128 Rayburn House Office Building at 2:00, to provide testimony to the Subcommittee on proposed legislation by the Federal regulatory agencies on emergency interstate acquisitions and related matters. More specifically, you are asked to testify on H.R. 4701, the Financial Institutions Emergency Acquisitions Amendments of 1986, the legislation proposed by the Federal regulatory agencies. A copy of the bill is enclosed.

In accordance with Committee Rules, please deliver 175 copies of your prepared statement to Room B303 Rayburn House Office Building twenty-four hours in advance of your scheduled appearance. Your statement in its entirety will be included in the hearing record and, if delivered as requested, the statement will be made available to all Subcommittee Members in advance of the hearing. To provide all Subcommittee Members with sufficient time for questioning, the oral presentation of your prepared statement must be limited to ten minutes.

Sincerely,

Fernand J. St Germain
Chairman

Enclosure
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STATEMENT OF GERALD J. LEVY
On Behalf of the U.S. League of Savings Institutions
To the Subcommittee on Financial Institutions
House Committee on Banking, Finance and Urban Affairs
May 6, 1986

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

My name is Gerald J. Levy, President of Guaranty Savings and Loan Association of Milwaukee, Wisconsin. I appear today on behalf of the United States League of Savings Institutions, where I serve as national chairman.

The League welcomes this opportunity to address current proposals for the recapitalization of the FSLIC, revisions in the statutory supervisory authority of the Federal Home Loan Bank Board, and the Financial Institutions Emergency Acquisitions Amendments of 1986 (H.R. 4701) sought by the Federal Deposit Insurance Corporation and other banking regulatory agencies.

On two previous occasions in this Congress, the U.S. League has been privileged to appear before this distinguished Subcommittee and the full Banking Committee to discuss the problems of the FSLIC and possible legislative steps to bolster its resources and its ability to deal with problem situations. On October 3, 1985 I testified that to the U.S. League's conviction that the problems of the FSLIC are manageable and can be resolved -- without drawing on resources, whether from the American taxpayer or the FDIC, from outside the unique chartering, insuring and liquidity-providing system available to savings and loan associations (the FHLBB, the FSLIC, and the Federal Home Loan Bank System). In particular, I opposed the merger of the FSLIC and the FDIC funds as neither necessary nor desirable.

The U.S. League continues to subscribe to that view. My first act as incoming chairman of the organization the following month was to create a special Task Force on FSLIC Issues which developed a comprehensive strategic plan for the FSLIC. The plan was adopted by our Board of Directors as League policy at its meeting in March of this year. Copies of the strategic plan have been made available to the Subcommittee members and senior staff. In brief, it sets forth four objectives:

#- The first thing that must be done is to stop new problems from developing;

#- The second step must be an effort to keep the problem cases which now exist from getting worse, thus avoiding an increase in the ultimate cost to the FSLIC;

#- The third step involves providing the FSLIC with ample resources to resolve the problem cases it faces;

#- The final step calls upon the Bank Board and the FSLIC for a commitment to strengthen the operating condition of the savings institutions business.

While I am sure that your Subcommittee will find of interest the detailed managerial and regulatory recommendations contained in our task force's report, your primary focus will be, I presume, to identify any statutory changes which might be needed to "provide ample resources" to the FSLIC and to permit quick enforcement actions to contain existing and future supervisory problems.

In addition to my appearance last fall, Mr. Jay Janis was also privileged to testify in March on the improving profitability and net worth situation in our industry, our criticisms of a General Accounting Office assessment of the condition of the FSLIC, a detailed description of regulatory initiatives already in place to prevent future problems, and legislation -- such as the plugging of the non-bank bank loophole and extension of the emergency acquisition/net worth certificate authorities -- which would contribute greatly to the protection of the FSLIC fund.

My testimony today will highlight comments made in my earlier appearance and that of Mr. Janis, which I would hope the Subcommittee will find of value as its approaches its legislating tasks.

Permit me to say at this point that while the U.S. League acknowledges that there is a need for bolstering the FSLIC and its supervisory tools, we believe that media attention to the condition of the insurance fund and our industry has been out of proportion to the magnitude of any realistic assessment of our problems. Certainly inadequate attention has been paid in the press to the remarkable overall improvement in the operating conditions at the vast majority of our member institutions and the confidence exhibited in our future by, for example, savings institution stock prices -- which have outperformed the bull market. The prolonged decline in interest rate levels and the robust housing market (in most parts of the country) are strengthening individual institutions and should minimize additional exposure for the FSLIC fund. The resolution of problem cases already encountered at the insuring agency should be facilitated by this marketplace improvement, as well.

Most importantly, home buyers and sellers will continue to be well served by the savings institutions business -- which is anxious to fulfill its Congressional mandate as the dependable source of residential mortgage credit. To achieve this result, however, the Congress -- and particularly the regulatory officials -- must not overreact to past problems so as to stifle the prospects for serving future homeownership demand.

Recapitalizing the FSLIC

Mr. Chairman, I am at somewhat of a disadvantage in discussing the Administration's/FHLBB's new plan for bolstering the FSLIC since this statement today precedes the appearance by Under Secretary Gould and Chairman Gray. Our organization has received a briefing on the "outline" of their proposal, but we have not yet seen the statutory language or details. They acknowledged in our briefing their gratitude for the work of the U.S. League's Task Force mentioned above and incorporated several of the principles which guided our industry efforts: the importance of stretching out problem case resolution to minimize marketplace disruption; the involvement of the Federal Home Loan Bank System in assisting its sister agency the FSLIC (while preserving the System's position in the debt markets); avoiding any new bureaucracy in the mechanism for transferring fresh funds to the FSLIC; and avoidance of any negative impact on the federal budget.

The U.S. League asks your permission to augment this statement with further comment when the Administration's/FHLBB's detailed legislative proposal is submitted to the Subcommittee.

While, based on what we have been told, the design is similar, the analysis of our Task Force and that of the Administration/FHLBB plan appears to differ considerably in degree. We believe -- with the improvement in interest rates and the several administrative/managerial/supervisory steps called for by our Task Force -- that the FSLIC confronts an $8 to $15 billion problem resolution caseload. The Administration/FHLBB's plan is targeted for a $25 billion figure. Our plan calls for the FHLBanks to contribute $1.87

billion over three years; the Administration/FHLBB suggests $3 billion over six. Our industry has already contributed roughly $1.5 billion through exercise of the extra, special assessment authority of the FSLIC found in Section 404(c) of the National Housing Act. Our Task Force plan contemplates a three-year contribution, for a total funding of $2.75 billion from this source. The Administration/FHLBB plan apparently contemplates an additional $4.3 billion from the special premium, with a full 1/8 of 1% of deposits assessed in 1987 phasing-out in equal steps by 1992. In addition their plan involves a $10 billion borrowing with potential added costs to FSLIC members

The U.S. League and its FSLIC-insured members can tolerate some continuation of the special assessment as part of the effort to restore the health of the FSLIC fund. But it must be recognized that this extraordinary burden has to be eliminated as soon as possible if the industry is to fulfill the housing finance needs of our nation. I am sure that your distinguished Subcommittee appreciates the distress of the vast majority of FSLIC-insured institutions in paying an extra premium to atone for the sins and mistakes of a few. The continued burden of the special assessment also retards our progress in rebuilding net worth positions -- which, of course, diminishes the cushion provided by institution capital for the protection of the FSLIC. And, you must recognize that the special assessment handicaps FSLIC-insured institutions in their marketplace competition with FDIC-insured institutions and other competitors for savings.

The U.S. League strongly recommends that any legislation addressing the recapitalization of the FSLIC also contain a date-certain end to Section 404(c) of the National Housing Act. Our FSLIC members must see some end in sight for this extra burden on their operations and some prospect for being able to compete with the equivalent protection provided depositors in FDIC-insured institutions on an equal footing. I would also recommend that, when the detailed Administration/FHLBB plan for the FSLIC is processed, this Subcommittee and the Congress direct the FSLIC to phase out the special 1/8 of 1% assessment as quickly as possible if the magnitude of the case resolution problem turns out to be over-estimated.

Similarly, we are concerned about the Administration/FHLBB's mechanism for Federal Home Loan Bank System participation. We believe that the "tapping" of FHLBank resources should be limited to retained earnings and not include primary paid-in capital of the System. It is important that retained earnings provide the source of the System's contributions to the proposed "funding facility" which will leverage through borrowings the amounts transferred to the FSLIC. Utilization of the System's retained earnings will preserve the dividend-paying capacity of the System, which is an important source of income to the savings institution stockholders. We also believe that the detailed presentation should provide, as did our Task Force report, a formula for adjusting the contributions from the 12 regional Home Loan Banks to allow for the FDIC-insured institutional membership in some of those Banks and for the differing levels of retained earnings at each regional bank.

Another important detail of concern to us is the accounting treatment of the funds transferred to the "funding corporation" from the regional FHLBanks. At our briefing last week, Under Secretary Gould and Chairman Gray stated that one of the objectives of their plan was to "seek to accommodate the FHLBanks' concerns for adversely affecting their position in the debt markets and avoiding any immediate accounting 'write down' on an investment in the FSLIC." Our current understanding is that this detail has not been fully resolved and that the net worth of the FHLBanks -- one of the enviable strengths of our system and a reason for its ability to borrow at reasonable rates in the capital markets -- will be impacted. Every effort should be made to avoid a "write down" in the contributions made by the FHLBanks, since the proposed mechanism contemplates an eventual return on the FHLBanks investment in the funding corporation.

We believe that the Congress and the industry must be assured that the FSLIC presents a realistic assessment of its funding needs for problem case resolution. As the Subcommittee knows, one of our primary objections to an earlier 1% upfront recapitalization plan was our skepticism that the agency was equipped to utilize prudently and efficiently $9 or $10 billion all at once without seriously interfering with markets across the country through "fire-sale" practices. In implementing this new plan, the FHLBB/FSLIC should be strongly encouraged to develop a detailed "game plan" for dealing with its accumulated caseload. The U.S. League stands ready to assist with industry expertise in this regard and the FHLBB should be encouraged to call upon its Federal Savings and Loan Advisory Council in the formulation of such a plan. For those assets already acquired through liquidation of failed institutions, the FHLBB also has chartered the Federal Asset Disposition Association (known as the "406 Corporation" after a section in the National Housing Act) -- and it should be utilized to the fullest extent.

Finally, in the development of a workable approach to bolstering the FSLIC, we again encourage the Congress to rely upon an expenditure basis of accounting, so that income is recognized as it is received and expenditures as they are disbursed. Mr. Janis addressed this subject at length in his testimony of March 5 before your panel. I would underscore today that focus on the FSLIC's "unobligated balance" gives misleading signals as regards the health of the FSLIC. The net worth of the FSLIC gives a more accurate assessment. Furthermore, the Congress should not be misled by the GAO's faulty analysis of the costs of resolving the FSLIC's caseload. It is particularly important to differentiate between the relatively minor exposure from institutions still suffering from locked-in interest-rate-spread problems (which may be managed through supervisory mergers and effective use of the FHLBB's Management Consignment Program) and those arising from institutions which adopted a strategy of investment in high-risk assets.

Other Demands on Resources

As noted, the Administration/FHLBB plan contemplates a $4.3 billion contribution from our industry through continuation of the special assessment and additional funds will be sacrificed through the likely diminution in dividends available on FHLBank stock. These are not the only clouds on the horizon as our FSLIC-institutions attempt to improve their earnings and rebuild their net worth.

In his testimony in March, Mr. Janis explained the difficulties found in House-passed H.R. 3838, the comprehensive tax legislation, for our institutions as corporate taxpayers and for the FSLIC as it attempts to accomplish supervisory mergers. The mandatory use of accrual tax accounting and the reduction in our permissible allocations to bad debt reserves can reasonably expected to cost $3 billion in increased federal taxes over the next five years.

In addition, two pending actions the Financial Accounting Standards Board pose severe consequences for industry earnings and net worth. Significant changes in the accounting treatment of loan fees and associated costs were put forth in an Exposure Draft last winter, on which comment is now being received. In broad brush, fees which have heretofore been taken into income immediately would have be amortized over the contractual life a loan (adjusted for actual prepayments) and only incremental direct costs could be deferred, effective in 1987. Furthermore, FASB is on the verge of completely revising its accounting conventions for special areas of the income tax laws, including the thrift bad debt deduction. What's more, the treatment would be rescinded retroactively -- leading to recapture of accumulated bad debt reserves and, according to the U.S. League's Research Department, a $5.5 billion "hit" to industry net worth if adopted. Because of the long-demonstrated concern of your Subcommittee for the health and performance of the thrift industry, we will keep you advised as the Financial Accounting Standards Board proceeds in these two vital areas.

Containment of Existing Problems

As mentioned, two essential ingredients of our Task Force's strategy were to stop new problems from developing and to prevent aggravation of existing problems. My previous testimony and that of Mr. Janis described the numerous regulatory and administrative steps adopted over the past year and a half by the Federal Home Loan Bank Board in this regard.

These include:

#- Efforts to curb use of brokered deposits;

#- Imposition of marginal net worth regulations tied to individual institution growth rates;

#- Direct investment restrictions aimed at limiting high-risk investments;

#- Tough requirements for newly-created institutions;

#- Strict accounting for acquisition, development and construction loans;

#- Extraordinary new authority to permit examinations and supervision personnel to classify troubled investments as "substandard," "doubtful," and "loss" with accompanying reserves and net worth reductions;

#- Decentralization to the regional FHLBanks and enlargement of examination staff, permitting concentration of field examiner efforts and greater examination frequency;

#- Creation of an Office of Enforcement at Bank Board headquarters;

#- The Management Consignment Program initiative, utilizing the resources of well-managed institutions to contain situations at problem institutions;

#- Chartering of the Federal Asset Disposition Association to reduce the FSLIC's asset management and liquidation costs.

The U.S. League has been supportive of all of these steps and is confident that they are already producing results for the FSLIC. It is important to remember that our institutions pay for all of these changes. More frequent examinations, for example, mean higher examination costs for the institution being examined since the system is funded entirely by the fees charged. Though the FHLBB is a government agency, no taxpayer subsidies are involved.

While, recognizing the increased costs, we have generally applauded the FHLBB's actions to date, the U.S. League must caution that our support for tougher supervision does not automatically mean that we endorse still further regulation. Given the recent problems with so-called "high-flier" institutions, operating under expansive State laws, there is a temptation to write regulations to prevent activities and practices which are important profit centers for soundly-managed institutions now operating and competing in the deregulated savings environment.

In this regard, our organization is examining with great care a bundle of industry-wide regulations proposed at the April 24 meeting of the Federal Home Loan Bank Board. We are concerned that cumulatively the scope of these proposals, as put forth, could retard our efforts to continue our progress in restructuring, rebuilding of net worth, and service to the home finance needs of our nation. For the Subcommittee's information, these new proposed rules include:

#- Severe new restraints on "nationwide" lending (outside of normal lending areas) in terms of who may buy and sell such whole loans and aggregate investment limits, and similar restrictions on participating in loans with other institutions;

#- An increase in the liquidity requirements for all FHLBank System members (including FDIC-insured members) from 5% to as much as 10%;

#- A schedule for ratcheting up minimum net worth to 6 percent of liabilities over 6 years, with back-dated extra net worth for the first 10% of direct investments, and the termination of net worth averaging by October 1 of this year (which was to be phased out by 1990 under existing rules);

#- Presentation to the public of statements of condition for mutual and stock companies on a Generally-Accepted Accounting Principles basis with footnote reconciliation to required regulatory accounting.

The U.S. League does not believe that current regulations are totally satisfactory -- indeed, our Task Force recommends a toughening of the existing loan-to-one-borrower rules. And we will endeavor to respond constructively to the above list. But it is important that a balanced regulatory framework be maintained. Again, for the protection of the FSLIC and the continued performance of our industry as the dependable source of home finance, we advocate tougher supervision, not regulatory overkill.

Statutory Enforcement Powers

Our earlier testimony discussed at length our general agreement with legislation submitted to this Subcommittee by the Bank Board involving changes in the Supervisory Act, H.R. 1680. We understand that a revised version may be forthcoming at the time of Chairman Gray's testimony and again would like to reserve an opportunity for future comment after that is presented.

To repeat very quickly some of our comments in this area:

#- The U.S. League is generally supportive of the Bank Board's request for authority to move quickly for temporary cease-and-desist orders through a lesser standard of proof, particularly where records are unavailable or deficient. If the Congress agrees to delete the modifiers "substantial" (before "dissipation of assets") and "seriously" (before "prejudice the interest of insured members"), we recommend that there be a 90-day limit on such relaxed standards so that the agency, after that period, must demonstrate the standards of current law when exercizing this extraordinary injunctive-type power. We are also concerned that top-level officials -- the Principal Supervisory Agent and the General Counsel -- review field examiner's judgments before a temporary cease-and-desist order is issued.

#- In pursuit of ordinary cease-and-desist orders against individuals who have resigned as managers or directors, the League suggests a two year statute of limitations be incorporated in any statutory change.

#- The FHLBB has also requested greater removal and prohibition powers, one portion of which equates "breach of professional duty" to "breach of fiduciary duty". Removal of a person from their livelihood is, obviously, an extremely serious matter and should only be undertaken with the most rigid requirements of due process. We believe that "breach of professional duty" is far too ambiguous a standard and not one necessarily within the expertise of the FHLBB's examination and supervisory personnel.

#- Given the enhanced ability to pursue temporary cease-and-desist orders as sought by the FHLBB, we do not believe it is necessary to provide an option (as appears in H.R. 1680) to go directly to the U.S. District Court to obtain injunctions for violations of law or regulation or correction of unsafe or unsound practices.

With these reservations, we generally endorse the Bank Board's legislative enforcement powers requests. We are especially supportive of the language modifying the change in control language of the Savings and Loan Holding Company Amendments of 1967 and the Savings and Loan Control Act. It is vital that the Bank Board have sufficient statutory authority to define key terms like "control" and "acting in concert" to pass on the suitability of persons wishing to acquire control of FSLIC-insured institutions. Our League also supports the clarification of priorities in receivership found in H.R. 2444.

Plugging the Non-Bank Bank Loophole

As the Subcommittee is well aware, our organization has consistently supported your efforts to redefine "bank" for purposes of the Bank Holding Company Act, plugging thereby the so-called non-bank bank loophole. Though there are some portions of H.R. 20 we would like to alter, we strongly support your efforts to see that the House has an opportunity to vote on this essential change in the Bank Holding Company Act. The proliferation of non-bank banks is a great threat to the stability of our system of regulated holding companies and makes a mockery of the pattern of interstate expansion of depositories.

Plugging the loophole is also vital to the prospects of the FSLIC for resolution of its caseload at least cost to our industry, the FHLBanks, and theoretically, the Government. Prior to the emergence of the non-bank bank phenomena, the FHLBB had considerable success in marketing problem institutions under the emergency acquisitions authority of the Garn-St Germain Act; the failure of the House Rules Committee to process H.R. 20 and the Congress to act has diminished greatly the interest of rescuers for the FSLIC's problem cases.

The continued delay in Congressional resolution of the non-bank bank problem has prompted the Bank Board to resort recently to a new and final rule-making permitting supervisory case rescuers to apply for branches in two or more states in addition to the target location -- the so-called "three-for-one" or "mileage-plus" approach. We did not support that proposal out of a conviction that the benefits to the FSLIC would not justify the potential marketplace disruptions it would generate. We are hopeful that proper and discreet administration will address our cost-benefit concerns now that it is a final rule. If the Congress could move quickly on the basic loophole-closing, thereby attracting new prospects to the resolution of problem thrift cases, we would hope that such "three-for-one" bonuses would prove unnecessary.

Before leaving this topic, permit me to make a final comment. Somehow, the myth has been created that any closing of the Bank Holding Company Act loophole must be accompanied by severe limitations on acquisitions of savings institutions and registration as a savings and loan holding company. The Garn-St Germain Act declared clearly that as long as a savings institution subsidiary remained committed to housing finance there was no point in applying bank holding company-like activities restrictions to acquirers. To our knowledge, no abuses have resulted from the unitary savings and loan holding company format. Indeed, it is essential that our specialized depositories committed to long-term home finance attract outside capital. In addition to the "thriftness" test, I would also point out that the Savings and Loan Holding Company Act contains several unique and stringent prohibitions on transactions between affiliates to assure against misuse of the thrift subsidiary.

The "Regulators' Bill"

Mr. Chairman, your invitation to testify also invites our comments on the Financial Institutions Emergency Acquisitions Amendments, H.R. 4701.

We are not, of course, privy to the problems which led the federal commercial banking regulators to ask for this statutory assistance. We know, of course, that 17 of the 25 largest banks could not meet a 5% total equity-to-assets requirement as of the third quarter 1985 and that SEC disclosures in the first quarter of this year clearly demonstrate major problems in the Southwest among giant regional banking companies. Commercial banks and bank holding companies which have concentrated in lending to the depressed oil and gas-producing and farm economies are exposed to major losses from non-performing assets. The public's confidence in our financial institutions depends on successful resolution of these problem cases.

The U.S. League is generally supportive of H.R. 4701. I attach to this statement a letter to Chairman St Germain from the Chairman of our FDIC Liaison Committee, a recently-formed group representing the FDIC-insured institutions within our membership. Because of the pressures of time, our FDIC committee made a cursory, non-technical review of this legislative proposal.

Today, I would like to make a few additional comments about H.R. 4701:

#- We strongly encourage Congress to extend the emergency acquisitions authority of Garn-St Germain for five years beyond the July 15, 1986 expiration date of present law; as a technical matter, we would note that the bill as introduced substitutes "April 15, 1991" for "April 15, 1986" -- and these dates should be adjusted in light of the temporary 90-day extension recently enacted;

#- We would suggest that your Subcommittee also take this opportunity to extend for five years the Net Worth Certificate authority also set to expire July 15 and to incorporate the improvements in that useful safety-net found in Representative Annunzio's H.R. 913;

#- We would hope that the Subcommittee would provide greater precision in framing two of the standards found in the definition of a "failing" bank: a bank "unable to meet its obligations" is too vague and "other grounds" under applicable State law might result in closures for technical violations;

#- We are pleased to see that in cases which do not involve FDIC assistance, the State supervisor retains clear authority to arrange an in-State solution; the requirement of an unanimous vote by the FDIC board is a reasonable safeguard where FDIC assistance is involved.

# # # # # # # #

This concludes the testimony of the U.S. League of Savings Institutions. I look forward to your questions.

USL
UNITED STATES LEAGUE of SAVINGS INSTITUTIONS WASHINGTON OFFICE
1709 NEW YORK AVENUE, N.W. / WASHINGTON, D.C. 20006 / TEL. (202) 637-8900

May 5, 1986

The Honorable Fernand J. St Germain
Chairman
Banking, Finance and Urban Affairs Committee
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

On behalf of the U.S. League's FDIC Liaison Committee, I am pleased to submit comments on the regulators' proposal to amend the emergency acquisition provisions of the Garn-St Germain Depository Institutions Deregulation Act of 1982.

By way of background, this committee was formed in 1985 to provide a forum for discussion of legislative and regulatory policies affecting FDIC-insured institutions who are members of the U.S. League. The Committee is currently composed of 44 members. The majority of the banks represented on the Committee are located in the northeastern section of the country, although we have a contingent of West Coast members. Banks represented on the committee include federally-chartered, FDIC-insured institutions, as well as state-chartered, FDIC-insured savings banks. We also have as members a large number of thrifts based in Massachusetts, state-chartered co-operative banks, which only recently obtained FDIC insurance.

On behalf of the Committee, I am pleased to advise that we are entirely supportive of the regulators' request for extension and liberalization of the emergency acquisition provisions of the Garn-St Germain Act. As you recall, these provisions were originally enacted to provide the regulators with additional powers to cope with the then-developing problems in the mutual savings bank industry. Although the issues involved in enacting Title I of the Garn-St Germain legislation were controversial, the thrift industry recognized the gravity of the situation and supported their enactment. The availability of the extraordinary powers, together with the enactment of the Net Worth Certificate Act, contributed importantly to the industry's recovery with only a minimum cost of the federal deposit insurance agencies. Subsequently, the problems of the savings banks have substantially abated and the industry has recovered dramatically.

THE AMERICAN HOME: THE SAFEGUARD OF AMERICAN LIBERTIES

At the same time, the commercial banks, particularly those whose lending activities have been concentrated in the energy and agricultural sectors are experiencing very severe problems. In turn, the FDIC faces very difficult challenges in preserving its fund and in coping with these problems. To assist them in dealing with commercial bank problems, the agencies have proposed amendments to the emergency acquisition provisions.

Our Committee supports the regulators' proposal. First, our experience indicates that the regulators have exercised judiciously the extraordinary powers granted in 1982 to them to deal with problems in the thrift industry. We are confident that the current members of the FDIC Board will continue to take only those actions which are absolutely necessary and the authority to be granted by this legislation will not be abused so as to pre-empt the proper role of the Congress and the States in enacting the legal framework controlling the nation's banking and thrift industries. Second, as members of the FDIC, we pay premiums to the fund. Although historically the premiums have been relatively low, recent demands on the agency arising out of the difficulties of Continental Illinois and others have been unprecedented. As a result, the traditional insurance premium rebate has been suspended. The proposal would permit the FDIC to resolve problems involving banks with serious and identifiable financial difficulties before those problems reach the state when they require federal financial assistance. This would reduce the potential demand on the FDIC's resources and, in turn, increase the likelihood that the agency will not exhaust its resources.

Although this latter reason is somewhat parochial, we are mindful of increasing public concern relative to the adequacy of the insurance funds. The original enactment of the Garn-St Germain law was a major factor in maintaining public confidence in the safety and soundness of the insurance funds. We believe that timely action on the regulators' current proposal would also contribute to public confidence.

Accordingly, and on behalf of the U.S. League's Committee on FDIC Liaison, I am pleased to support the regulators' proposal and respectfully urge that your Committee act favorably on the bill.

Sincerely,

Harry W. Albright

Harry W. Albright
Chairman
FDIC Liaison Committee

HWA:ABE:mdm

April 2, 1986

STATEMENT
OF
THOMAS P. RIDEOUT

on behalf of the
AMERICAN BANKERS ASSOCIATION

on
EMERGENCY INTERSTATE ACQUISITIONS

before the
SUBCOMMITTEE ON FINANCIAL INSTITUTION SUPERVISION,
REGULATION AND INSURANCE

of the
HOUSE COMMITTEE ON BANKING, FINANCE
and URBAN AFFAIRS

May 6, 1986

Mr. Chairman and members of the Subcommittee, I am Thomas P. Rideout, President and Chief Executive Officer of the Savannah Bank and Trust Company, Savannah, Georgia. I am also Treasurer of the American Bankers Association and a member of its Board of Directors. Our Association is the largest national banking trade association and its members include banks of all size, type, and location. We are pleased to give you our views on the subject of emergency interstate acquisition of failed or failing banking institutions.

The subject of these hearings is very important. The outcome of your deliberations will be important for the future of the banking industry, its deposit insurance system, and our economy as a whole.

Because this subject is so important, we devoted a substantial amount of time to it at our recent Banking Leadership Conference. As you may know, Mr. Chairman, this is the largest and most broadly based policy advisory group our Association has. It consists of 430 bankers, and is comprised of our Board of Directors, our Government Relations Council, elected delegates to the Conference, the heads of staff and elected officers of the major national banking trade associations, the fifty state bankers associations, and the bankers associations of the District of Columbia and Puerto Rico. This group meets from time to time to discuss issues of major importance to our industry and to give recommendations to our Board of Directors, which then formulates our policy positions.

Although our Leadership Conference did not have the benefit of the precise proposed legislative language which was subsequently submitted to Congress, we did benefit from the input of Chairman Seidman of the FDIC, who addressed the Conference. We also benefitted from a presentation by a panel of bankers from the troubled agriculture and energy states that conceivably could be most affected by the proposals you are considering. The Conference participants than held extensive discussions and came to several conclusions.

The legislative proposals being considered here today involve a balancing of hard choices. In the past eight years our economy has gone through a very difficult adjustment period. We have experienced: first strong inflation and double digit interest rates; then substantial disinflation and a steep recession, and now a resumption of more moderate, stable growth. This volatility has taken its toll on our economy, and certain sectors have been hurt more than others. Because banks lend to almost all sectors of the economy, the condition of the banks is, inevitably, a reflection of these ups and downs.

Two areas that have been particularly hard hit are energy and agriculture. Farmers are struggling hard to overcome the effects of disinflation on land prices and the new realities of a competitive world marketplace for their products. Energy producers are only beginning to struggle with the breakup of the OPEC oil cartel. Agriculture and energy banks are working hard to maintain their profitability so that they can have the capacity to work with their customers through this difficult adjustment period. Regulators, with the support of the Congress, have acted progressively in designing regulatory forbearance procedures which should help bankers and their customers in making those difficult adjustments.

The participants in our Banking Leadership Conference saw the issue before the Subcommittee today as one calling for a careful balancing of, one, the need for greater regulatory flexibility to deal with troubled institutions with, two, the ability of states to determine their own process, if any, for engaging in interstate banking. After listening to

FDIC Chairman Seidman and bankers in agricultural and energy states, our bankers determined that the regulators did need greater flexibility than that provided by the current provisions of Title I of Garn-St Germain.

Undoubtedly, such flexibility, if implemented, will hasten interstate banking in the affected states. It is interesting to note that, since the Supreme Court decision in Northeast Bancorp, interstate banking, in various forms, has been proceeding rapidly via state laws. We estimate that by the end of this year over two-thirds of the states will have enacted some type of interstate legislation. Nevertheless, we recognize that this evolution in state laws may not give the regulators the flexibility needed to resolve important troubled bank situations.

Our bankers were concerned that, without this additional flexibility, the regulators might find it difficult, or even impossible, to find a purchaser for particular troubled banking institutions. If the regulators were unable to find a purchaser, they might be forced to resolve a bank failure in a manner which has a negative impact on the local and state-wide economy, as well as on other banks within the same state. It should also be noted that such a result would have a negative impact on the FDIC insurance fund. We have a strong FDIC fund, and we wish to keep it that way. Furthermore, as the fund is forced to use more of its resources to deal with troubled institutions, bank assessment rebates may be scaled back, lowering bank profits and potentially slowing capital buildup in banks. We believe the regulators should, in general, have the flexibility they need to avoid such results. We might wish that there were better alternatives; but realistically, there do not appear to be any.

Nevertheless, we do have some suggestions as to how the regulators' proposal might be fine-tuned to limit its impact on the various state banking laws without inhibiting bids from potential acquirers when they are needed. But first let me present our position. Again, this position was adopted by our Board before the regulators' bill in its final form was developed.

April 18, 1986, Statement of the ABA Banking Leadership Conference

The federal banking regulators have developed a proposal providing for additional regulatory authority for emergency acquisitions of failing financial institutions. The American Bankers Association, in light of current economic circumstances, supports legislation which would grant the regulators the additional authority they have requested.

The ABA also adopted the following additional policy positions, intended to refine the regulators' proposal:

1. The definition of a "failing bank" (which would be eligible for emergency acquisition) should be strictly drawn.
2. Any emergency acquisitions under the expanded authority should be permitted only if the state banking regulator in the failing institution's home state does not object to the acquisitions.
3. While ABA supports a reduction in the threshold size of the institution to be acquired from $500 million to $250 million, as requested by the regulators, ABA believes consideration should be given to reducing the threshold further under appropriate circumstances.
4. This expanded regulatory authority should be subject to a three-year sunset provision.

The ABA Banking Leadership Conference emphasized strongly that legislation is also needed to close the nonbank bank loophole because the existence of the loophole undercuts the motivation to acquire failing banks.

Subsequent to this April 18 meeting we received the proposed legislative language submitted to Congress by the regulators. We are pleased to see that most of the concerns of our Banking Leadership Conference have been at least partially addressed in the proposed legislative language. We do still have a few concerns which I would now like to address.

The proposed legislative language lists three criteria to be used to determine if a bank is in danger of closing:

1. the bank is not likely to be able to meet the demands of its depositors or pay its obligations in the normal course and there is no reasonable prospect for it to do so without federal assistance; or
2. the bank has incurred or is likely to incur losses that will deplete all or substantially all of its capital and there is no reasonable prospect for replenishment of the bank's capital without federal assistance; or
3. other grounds exist or are likely to exist under state law for closing the bank.

The term "federal assistance" is not defined. We suggest substituting "potential losses to the FDIC." One thing this substitution would do is prevent the confusion of assistance from the FDIC with assistance from the Federal Reserve through its discount window.

It is conceivable that a bank could be fundamentally solvent but, because of panic conditions in financial markets, be unable to meet the demands of its depositors or pay its obligations. This is the classic definition of a liquidity crisis which the Federal Reserve's discount facility was designed to stem. The proper remedy is to use the discount window, not to have an interstate merger.

With the proper language substituted for "federal assistance" in criterion 2, this criterion seems to us to be a sensible definition of a bank that is in danger of failing. With this definition, the first criterion would not appear to be needed.

The third criterion is overly vague, and its meaning is difficult to discern. In any case, with the change we have suggested this criterion would also seem to be unnecessary. If a state law could force a bank closure such that the FDIC incurred losses, then an interstate merger could be arranged under criterion 2 if necessary. If a state law could force a closure in which the FDIC would not incur losses, there is no need for an interstate merger.

The provisions of Garn-St Germain regarding the role of the bank supervisor are kept in the proposed extension. These provisions state that in the event of a proposed interstate acquisition of a troubled bank, there shall be notice to and opportunity for objection by the State bank supervisor (whether the bank has a state or Federal charter); and if the State bank supervisor objects, the FDIC's Board of Directors may exercise its authority only by unanimous vote.

We believe that in troubled bank situations the interests of Federal and State supervisors in resolving the problem are largely the same and that the state regulator has a unique understanding of his or her state. Therefore our preference would be for as strong a role for the state supervisor as is practicable.

The proposed legislation would lower the old $500 million limit of Title I of Garn-St Germain to $250 million. We support this reduction and note that at our recent Banking Leadership Conference there was significant sentiment for reducing this level further. We suggest that this be considered under appropriate circumstances. Additional formulas, such as allowing emergency interstate acquisitions of the largest three or five banks in a state also deserve consideration.

We prefer a three year sunset provision to the five year period specified in the proposed legislation.

The proposed legislation specifies that an out of state bank which acquires a bank through an emergency acquisition may acquire additional banks located in the three largest metropolitan areas in the state, provided that bank holding companies within the state are allowed to expand to the same extent. At the time of our consideration of this legislation at our Leadership Conference, no such provision was in the regulators' proposal. Nevertheless, our Board of Directors recognized that some form of expansion rights within the state might have to be granted in order for the FDIC to obtain the necessary bids. However, they felt that this concern needed to be balanced against the possibility that an out of state bank, not subject to the economic problems that affected large numbers of instate banks, could acquire a single bank through an emergency acquisition and then be in an extremely strong acquisition position vis-a-vis other instate banks. In other words, the new entrant might be able to move quickly to acquire other banks while the instate institutions are still recovering from the economic downturn. Because our Board of Directors did not have a chance to consider the specific provision in the regulators' bill, we have not developed a detailed position. However, if a compromise is needed to attract sufficient bidders, there would seem to be a number of other alternatives the Congress might wish to consider. For example, the new entrant could be granted expansion rights after a phase-in period.

Finally, we note that the nonbank bank loophole has not been closed. The existence of this loophole will obviously undercut the efforts of the regulators to sell troubled institutions. The sooner this problem is dealt with, the better off we all will be. In this regard, we wish to reiterate our strong support for H.R. 20 as reported by this Committee.

Conclusions

Questions of changes in interstate banking laws raise many difficult issues which must be dealt with cautiously. But these issues must be balanced with the need for the regulators to have the tools they need to handle the difficult problems they face in dealing with troubled institutions. The proposal you are considering is a good start towards the required balancing of delicate issues. We have some general concerns which have been dealt with partially in the proposed bill. We have tried to make some specific suggestions as to how our concerns could be further addressed, which we hope will be useful to the Subcommittee. It appears that this legislation may need to be enacted fairly quickly. Under current circumstances it is our feeling that the regulators deserve our support.

STATEMENT OF COMMISSIONER EUGENE W. KUTHY
MICHIGAN FINANCIAL INSTITUTIONS BUREAU

BEFORE THE
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS SUPERVISION, REGULATION AND INSURANCE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

UNITED STATES HOUSE OF REPRESENTATIVES

MAY 6, 1986

Mr. Chairman, members of the Subcommittee, I am Eugene W. Kuthy, Commissioner of Financial Institutions for the State of Michigan and Vice President of the Conference of State Bank Supervisors, on whose behalf I am testifying today.

The Conference of State Bank Supervisors (CSBS) is the professional organization of state officials who charter, regulate and supervise the approximately 10,500 state-chartered commercial and savings banks of the nation. Created in the early 20th Century as a clearing house for the ideas of the state bank supervisors on common problems, CSBS has evolved into the major champion of our decentralized American banking and bank regulatory structures. In addition, the Conference has become the primary source of educational and research services aimed at strengthening individual state banking departments.

We are pleased to have this opportunity to testify before this Subcommittee and discuss current legislative proposals for the expansion of the emergency authority of the Federal bank regulatory agencies. Let me state, at the outset, that CSBS recognizes that a problem exists, particularly in certain areas of the country and with certain types of banks, especially those heavily committed to agricultural and energy lending. CSBS is willing to work with the Federal agencies to expand their regulatory flexibility and better utilize their existing authority. However, the scope of current problems has been insufficiently defined to sustain the broad request for increases in statutory authority now proposed by the Federal agencies. CSBS would be willing to support legislation which is necessary to meet the situation, provided that such legislation provides adequate safeguards to ensure that it is used as a last rather than a first choice. CSBS will never support measures to insulate the Federal deposit insurance fund from assisting transactions or paying the depositors it insures, if necessary, by selling interstate franchises in contravention of state law, the Douglas Amendment and the orderly evolution of the banking structure. In essence, our position is that the Douglas Amendment is not and should not be for sale.

Background

As you, the members of this Subcommittee, well know, Section 116 of the Garn-St Germain Act authorizes the FDIC, as receiver, to arrange the sale of assets and assumption of liabilities of a closed bank with total assets of $500 million or more to an out-of-state bank or bank holding company. With respect to insured banks organized in mutual form, with $500 million or more in total assets, Section 116 further provides for the interstate sale of assets and assumption of liabilities or the interstate merger of such an institution which is "in danger of closing." However, the FDIC may use this authority "only where the board of trustees of the insured bank and the appropriate Federal or State chartering authority have specified in writing that the bank is in danger of closing and have requested in writing that the Corporation assist a merger or a purchase".

The Federal bank regulatory agencies have now proposed greatly liberalizing their own authority to deal with problem banks by permitting the interstate sale of banks and bank holding companies "in danger of closing" and reducing the asset size eligibility test from $500 million to $250 million. This proposal represents a serious divergence from our current system of bank regulation and includes many elements rejected by Congress in passing the emergency provisions of the Garn-St Germain Act. Those who propose changes bear the burden of showing that such changes are necessary and that there are not significant disadvantages involved in making the proposed changes. CSBS believes that the Federal agencies have failed to meet that burden on both counts.

The FDIC has built its case for expanded authority for the interstate sale of "failing" banks around the need to protect the insurance fund. It contends that a decreased loss to the insurance fund would result from flexibility in locating interstate buyers at an earlier stage, and from the ability to act at an earlier point in time, thereby stemming losses and outflow of uninsured accounts. In essence, it is expected that a higher premium would be paid for a bank that has not been closed and/or an entire BHC, including its healthy assets and several locations.

We agree with the FDIC that the uninterrupted provision of services and the maintenance of public confidence are extremely desirable ends. We have worked with the Federal agencies toward these ends both here in Washington and in individual states.

However, the legislative approach which has been proposed by the federal regulators boils down to financing the deposit insurance fund, already paid for by the industry, with a yearend balance of $17.9 billion, by selling interstate franchises to rich buyers in states where such would not otherwise be available.

Need For Proposed Legislation

The burden of proof that the proposed changes are necessary has not been met nor has the scope of the problem been defined.

First, the FDIC has not demonstrated a need for the expansion of its authority to include the interstate sale of banks in danger of closing on the basis of inadequacy of current law. State laws and regulations have provided adequate flexibility to arrange such transactions and, in several cases, have been specifically amended to accomodate the interests of the FDIC in handling failing banks. In one case, a remedial state statute was enacted within one week. It must be remembered that the interest of the state in fashioning a timely and suitable remedy to a problem situation is at least as great as that of the FDIC, if not more so.

Cooperation and flexibility are the two key elements in handling a bank failure. With the primary regulator working closely with the insuror of the critically wounded institution, the combined expertise, resources and regulatory tools of the

State and Federal systems can be brought into play. Experience has shown that an efficient and minimumally disruptive solution can be accomplished at a relatively low cost loss to the FDIC fund.

Second, the FDIC has not demonstrated that any significant cost savings would accrue from the proposed expansion of its authority. Certainly, it is not true that cost savings would be universal, as has been implied. In some cases, the regulatory tool selected to meet broader objectives may not represent the lowest projected cost. Historically, however, there has not been a wide spread between the actual loss figures for the various tools. In point of fact, mergers are often arranged prior to actual closing of the institution over a weekend, with the acquired institution reopening for business on the next business day. This is done under the authority of the Office of the Comptroller of the Currency and the State Banking Departments, working in cooperation with the FDIC. Little or no savings would accrue to the fund in these instances under the proposed changes. Further, it could be counterproductive to signal the demise of a bank by formally classifying it as failing and openly seeking bidders, which would tend to cause earlier outflows of uninsured accounts and would destroy some of the flexibility that now exists in the handling of troubled banks. Also unaffected would be those instances in which pay-off is the required supervisory tool because of the presence of fraud or other illegal activities.

Third, the FDIC has not made any specific case with regard to the sale of entire BHCs as a package. It has not shown that it could not successfully sell the lead bank alone, that the remaining holding company could not survive after sale of the lead bank, or that selling off the healthy parts of the BHC to revive the troubled lead bank, the traditional way of handling such problems, is not still the most effective way of handling such problems. All they have alleged is that they can get more out of the interstate sale of a big package, including healthy banks, than they can for a single problem bank. The interstate sale of healthy banks for the benefit of the insurance fund has never been contemplated by Congress as a part of any emergency authority, nor should it be.

As you know, CSBS monitors developments in state banking law throughout the nation. We have seen several states, faced with difficulties, adopt emergency interstate provisions under their general authority and their authority under the Douglas Amendment. Yet, state legislatures in several states affected by recent developments have declined to do so. The Federal agencies would have you believe that these state legislators are irresponsible and that is why you must act. This is simply not true. The impact of bank failures is felt most keenly at the state and local level. Rather, a bird's-eye view of the problem is not so severe as to warrant the sweeping changes proposed by the Federal agencies. In fact, recent developments suggest that the economic downturns of concern are "bottoming out" and that the true scope of the problems with which we must deal may now be more responsibly assessed.

Disadvantages Of Proposed Legislation

The burden of proof that there are not significant disadvantages involved in making the proposed changes has also not been met. In fact, there are serious, legitimate countervailing considerations:

1. Broader public interests should be served in deciding whether and when to close a bank, not merely the protection of the insurance fund. Whether or not it is true that earlier closing of a problem institution will result in a smaller loss to the fund, broader public interests are served by our system of bank regulation and are entrusted to the primary regulators of banks. These other objectives, including the rehabilitation of institutions, may well be forgotten by an agency with limited scope.

The bottom line in the handling of any bank failure situation is the maintenance of banking services and public confidence in a stable banking system. Surviving institutions should have an opportunity to operate in an environment that has been disrupted to the least extent possible and the public should be able to continue receiving loans and deposit services with minimum inconvenience and added cost. The FDIC fund was created to protect depositors and to promote the stability of the banking system. Banks have contributed to the fund for these purposes. Protection of the fund, in and of itself, is not the primary goal of the failing bank exercise.

2. Expansion of FDIC authority to sell interstate franchises represents an unwarranted departure from our current system of bank regulation. It is the primary regulator, which grants the charter and is responsible to the public for performance under that charter. Decisions as to appropriate bank structure, balancing the need for competition with the natural tendency to concentration of financial markets, are made at the state level. Individual states have been determined to be in the best position to pass judgement on the questions involved in bank structure. Mr. Chairman, as you have said, "The emergency powers are tantamount to a major rewriting of the Nation's banking laws, particularly the McFadden and Douglas Acts relating to interstate banking."

Obviously, there are implications for the insuror of the institution in both the timing and the way in which a failing bank situation is handled. However, the sale of interstate franchises, a waiver of existing law with competitive advantages, for the benefit of a few already advantaged institutions, should not be undertaken unless absolutely necessary. It is deplorable to think that the largest institutions in the nation and the shareholders of problem banks will benefit from economic problems under which others must suffer. Windfall profits coming from the interstate sale of problem banks, like "war profits", should not reward shareholders of those institutions.

3. There is great potential for the abuse of discretion in the determination of what is a "failing" institution or when such authority should be invoked. Agency action has not always been even-handed in its use of discretionary powers, which may result in selectivity inconsistent with the purposes of the Federal Deposit Insurance Act. There is potential for discrimination by size or type of bank, or it may be occasioned by the desire to undercut a particular state which has not been sufficiently "progressive." It would certainly depend in part on the "marketability" of an institution, with portfolio and geographic advantage being prime factors. Individual states or whole regions could possibly bear the brunt of discriminatory use of the interstate sale of problem institutions. In addition, a "race to the courthouse" atmosphere could be generated, with the FDIC competing to be first in line with its hand-picked interstate partners. The decision of when to close an institution should be one guided by broad public policies, not the desire to control the mechanism of the disposition of that institution.

4. The safeguards provided by proposals to date are wholly insufficient in protecting valid state and local interest in the banking system. It has been argued that, by requiring that both the Board of Trustees of the troubled bank and its

chartering agency specify that the bank is in danger of closing and request FDIC assistance, any valid state interest has been accounted for.

First, the argument wholly ignores the politics of the problem bank situation. It ignores the leverage which the FDIC has over the officers and Board of a problem bank. This leverage can be used both to get the necessary written request and to solicit an application for a change of charter to a national charter, if such a change suits the FDIC's purposes. Moreover, the threat of the use of a pay-off, rather than a post-closing merger or purchase and assumption, coupled with the potential for a charter change can be used to bring direct pressure on an individual supervisor.

Second, if the troubled bank is a national bank, the mechanism is in the hands of the OCC. There is no accounting for valid state interest in maintaining control over both its bank structure and its capital delivery system. The only applicable "safeguard" in the case of a national bank is the consultation requirement, under which the objections of the state supervisor can be overcome by a unanimous vote of the FDIC, the body which proposed the interstate sale in the first place.

5. The expansion of the FDIC's ability to sell banks "in danger of closing" would undercut the current market for failing thrifts. This should be of serious concern to anyone acquainted with the current condition of the thrift industry and the FSLIC.

In a related matter, it would undercut the safeguards which we were successful in having imposed on cross-industry and interstate thrift acquisitions, namely the requirement that these thrifts abide by bank branching standards and the requirement that they continue to be operated as thrifts. The market for "qualified thrift lenders" will be greatly reduced if "full service banks" may become available in the same market.

It is important to understand that the proposed changes expand authority to deal with banks and BHCs, not with thrifts. Section 123 of the Garn-St Germain Act already provides for the interstate and cross-industry acquisition of any size S&L which is eligible for assistance, upon a determination by FSLIC that "severe financial conditions exist which threaten the stability of a significant number of insured institutions, or of insured institutions possessing significant financial resources," and that such an action would lessen the risk to the Corporation. Proposed changes would undercut, rather than enhance, the market for failing thrifts created by this section.

CSBS believes that possible alternatives to the drastic legislative proposal before you have not been adequately explored. We believe that opportunities to assist intrastate transactions through the use of "bridge" banks or other mechanisms which buy time for the FDIC should be taken advantage of. Forgotten in the debate to date is the rule that the least drastic alternatives should be explored first. Perhaps proponents of sweeping changes have forgotten that assisted intrastate transactions have always been a reasonable alternative and that least cost to the insurance fund is not always the least societal cost. We would hope that insulation of the insurance fund, which is definitely not on the verge of bankruptcy, against any loss has not become a convenient means for other legislative ends.

Necessary Legislative Safeguards

If a need for legislation to supplement the FDIC's existing authority can be shown, we are willing to work with Congress and the agencies to minimize the serious disadvantages in the proposed changes identified above. Such legislation, in order to have the acceptance of CSBS, would have to include the following elements:

1. The definition of a "failing bank" eligible for emergency interstate acquisition should be strictly drawn.

2. Any emergency acquisition under the expanded authority should be permitted only if the state banking regulator in the failing institution's home state does not object to the acquisition.

3. Stockholders in the "failing" bank should be required to agree to limit windfall profit-taking to 1/3 of net book at time of sale or 1/3 of market value as measured by net proceeds of sale of the institution, whichever is less, in instances of interstate sale; alternatively, authority for the interstate sale

of banks "in danger of closing" should be limited to assisted transactions only, cases in which no premium above making the FDIC whole will accrue.

4. The threshold size of institutions eligible to be acquired should be not less than $500 million or one of the four largest banks in a state, which would account for states where even the largest banks do not meet the current threshold without drastically increasing the pool of banks eligible for interstate sale in other states.

5. Both the primary regulator of the bank and the Board of Directors of the bank should be required to specify both that the institution is in danger of closing and that FDIC assistance under this section appears to be an appropriate solution in a particular case.

6. A meaningful preference for intrastate acquisition, under which the FDIC need not be made 100% whole, but may assist an intrastate transaction before peddling an institution interstate should be written into the bill.

7. Reoffer provisions should be made meaningful by giving bidders estimates on cost to the FDIC fund and other pertinent information.

8. The emergency authority granted should sunset in not more than five years.

In addition, CSBS feels strongly that the FDIC should not be allowed to sell an entire BHC as a package deal; however, an out-of-state purchaser of a lead bank of a BHC should be treated as an in-state bidder for subsequent transactions, unless specifically precluded by state law. If BHC "packaging" becomes the rule it will create a strong bias toward interstate sale by forcing bids on larger, more expensive packages, and reducing the number of potential in-state bidders. Also, the multiplicity of locations of a BHC could mean that a "package" acquisition may not make good business sense and may even create antitrust problems for potential in-state buyers already operating in that market. Selling off profitable subsidiaries of the BHC separately, as is current practice, continues to make good business and policy sense. The possibility of "parcelling" the assets of a BHC for offer intrastate, so that something less than the entire BHC could be bid on would also help in this regard.

Finally, CSBS strongly believes that legislation is needed to close the nonbank bank loophole because the existence of the loophole undercuts the motivation to acquire problem institutions of any type.

Thank you Mr. Chairman, members of the Subcommittee. I would be happy to answer any questions you might have.

TO PRESERVE THE AUTHORITY OF THE FEDERAL BANKING SUPERVISORY AGENCIES TO ARRANGE INTERSTATE ACQUISITIONS AND MERGERS FOR FAILED AND FAILING BANKS

WEDNESDAY, MAY 7, 1986

House of Representatives,
Subcommittee on Financial Institutions,
Supervision, Regulation and Insurance,
Committee on Banking, Finance and Urban Affairs,
Washington, DC.

The subcommittee met at 10 a.m. in room 2128 of the Rayburn House Office Building; Hon. Fernand J. St Germain (chairman of the subcommittee) presiding.

Present: Chairman St Germain; Representatives Barnard, LaFalce, Oakar, Vento, Frank, Roemer, Kaptur, Kanjorski, Manton, Wylie, Leach, McKinney, Shumway, McCollum, Wortley, Roukema, Bereuter, Bartlett, and Roth.

Also present: Representative Thomas R. Carper of the full committee.

Chairman St Germain. The subcommittee will come to order.

Today we continue our hearings on legislation proposed by the Federal regulatory agencies dealing with emergency interstate acquisitions and FSLIC recapitalization.

This morning we hear from one of the Federal Government's most influential regulators, Federal Reserve Board Chairman Paul Volcker.

Following Chairman Volcker's testimony and questioning, we will hear from John R. Petty, chairman of Marine Midland Bank; Hans H. Angermueller, vice chairman of Citicorps North America; and John P. LaWare, chairman-elect, Association of Bank Holding Companies.

We welcome you Chairman Volcker.

My colleague, the ranking minority member, Mr. Wylie, has a statement at this point, and he is recognized.

Mr. Wylie. Thank you very much, Mr. Chairman. I too would like to welcome Chairman Volcker and our distinguished panel of witnesses.

I am inclined to support the extension of the Garn-St Germain emergency acquisition provisions. It is my judgment that these provisions have been extremely useful to the regulators in resolving problems confronted by some of our financial institutions, and I do think that the bank supervisers need to have adequate tools to deal with emergency situations.

I speak a little bit from a perspective of one who lived through a crisis of confidence situation in Ohio where regulators had to be prepared and had to have the necessary authority and tools to meet a very serious situation.

We found that some out-of-State banks did come in and convert some of our State chartered S&L's who were insured through Ohio Deposit Guarantee Fund into State chartered banks, and they are doing very well today. It seems that the depositors and everyone concerned have benefited from that. So, as I say, I do have some background and experience there.

It seems to me as if the bill before us does deserve serious consideration and we need to explore and evaluate the many alternatives suggested by the witnesses as to exactly where we are going in these hearings.

I thank you very much, Mr. Chairman, for your diligence and persistence on this issue.

[The opening statement of Congressman Wylie in its entirety and letters of invitation may be found at the conclusion of this day's hearing in the appendix.]

Chairman St Germain. Thank you, Mr. Wylie.

Before we begin, Chairman Volcker, I would like to get some of the current headlines in perspective. With all the rosy afterglow of the economic summit in Tokyo, I am wondering if we should assume that the economic crisis on which much of the regulators' bank assistance program is based is now a thing of the past. I know you and your colleagues have followed the details of the Tokyo meeting in great detail. I am sure those monks down there at the monestary are assiduous in following it all.

If substantial progress is made, would this affect the emergency nature of H.R. 4701? And if there are some other facts behind the headlines that we are not aware of but that you can enlighten us on, certainly we would be most appreciative.

Chairman Volcker.

STATEMENT OF HON. PAUL A. VOLCKER, CHAIRMAN, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Mr. Volcker. However enlightening and constructive the summit discussions may have been, I don't think they bear much direct relevance to this problem, which reflects events that have been taking place over a period of years and, of course, events quite recently in terms of conditions in the energy and agricultural industries in particular.

Chairman St Germain. Fine. Well, if that's the case, we will put your entire statement in the record and you may proceed. If a thought occurs to you as you go along, please share it with us.

Mr. Volcker. I appreciate the opportunity to appear before the subcommittee to discuss the Financial Institutions Emergency Acquisition Amendments of 1986, the proposed act. I would emphasize the legislation makes some important, but still limited, changes to the emergency provisions that are already incorporated in the Garn-St Germain Act.

We have an explanation of the bill attached to my statement and I won't review it in detail.

I am appearing here as one part of a group of Federal regulators who agree upon the desirability and necessity of this bill.

In light of the strains and pressures involved, banks in entire States or regions of the country, particularly as a result of the turmoil in energy and agricultural markets, face unusually severe economic conditions.

As you know, the existing emergency provisions provide for emergency interstate acquisition of failed banks of $500 million or more.

There are companion provisions for thrifts that are decidedly more liberal both with respect to size and other criteria. Both provisions, I believe, have been decidedly helpful in dealing with points of strain, although they have not needed to be used all that often.

The banking structure and economic conditions in States heavily impacted by energy and agricultural problems strongly indicates that these authorities need to be strengthened to provide further assurance that problems, actual and potential, can be dealt with expeditiously and in a manner that will avoid potentially contagious and debilitating loss of confidence within a State.

Specifically, we are concerned that the States where major banking organizations take the form of multibank holding companies we have the tools to deal with banks within that holding company structure as a coherent whole rather than piece by piece.

We also believe that in some situations we can act more expeditiously, with less risk to confidence and to other banks and with less cost to the FDIC insurance fund if mergers with out-of-State institutions can be arranged before a bank actually fails or requires FDIC assistance.

Specifically, our strong recommendation is that the emergency acquisition powers be expanded to allow the interstate acquisition of a multibank holding company or some or all of the banks within a holding company when a significant portion of the banking assets of a holding company are impaired; reduce the bank asset size criterion for such interstate acquisitions to $250 million from $500 million; and permit acquisition of failing as well as failed banks.

As members of the subcommittee are well aware, a series of developments over this decade have adversely impacted banks and led to an unusual number of failures and more generalized strains. Disinflation, strong competition and rapid changes in technology and market values have all played a part.

Taken as a whole, the banking system has responded constructively and resiliently to these pressures. There is, indeed, highly encouraging evidence that the system as a whole is now gaining strength. Specifically, for most banks, capital ratios have improved, earnings have increased and nonperforming assets have been reduced.

Nevertheless, in certain areas of the country, particularly where the economy is heavily dependent on agriculture and energy, these strains have been particularly great, and they have been aggravated by the sharp declines in energy, agricultural and land prices.

It is mainly in those areas where we face a compelling need to be in a position to deal with problem situations in a manner that will protect rather than undermine the strengths and stability of the whole, including the vast majority of institutions that are fully capable of dealing with their own problems so long as general confidence is maintained.

Fortunately, the banks, large and small, that have served now troubled energy and farming businesses have typically been in a relatively strong position. They have generally been characterized by historically high capital ratios, good earnings and ample liquidity. The fact that they have been able to draw on these strengths has provided a strong first line of defense in dealing with the present pressures, and ordinarily that should be adequate.

Supplementing their natural strength, the Federal Reserve is, of course, fully prepared to provide assistance as part of the process of making necessary adjustments to pressures through its discount window. The availability of that kind of normal and appropriate assistance by the central bank, backstopping the resources and resourcefulness of the banking organizations themselves, should in itself enable solvent institutions to adjust to the situation.

However, there is one remaining potential danger to the stability of banking in these heavily impacted areas and therefore to the entire economies of some States or regions.

The failure of a few important institutions, unless handled expeditiously and effectively, could raise unwarranted concerns about other basically sound banks and lead to a contagious and spreading loss of confidence. It is that contingency that we want to deal with and toward which the proposed legislation is directed.

The powers sought are precautionary. Perhaps they will in the end not have to be used. I hope not. But it surely would be imprudent to rely on that hope alone. Recent earnings reports and other difficulties at a few institutions point to the danger. A prompt congressional response will in itself provide a strong message of reassurance.

The case for this legislation is, I believe, widely acknowledged in the States most directly concerned. The debate, as I have observed it, revolves around specific provisions of the proposed legislation that balance the need for effective action against the concerns of States and banks within a State that they be able to preserve their ability to determine the future of their State's banking structure.

In striking that public policy balance, Congress has already concluded that interstate banking acquisitions are appropriate in certain emergency situations, those involving failed banks of $500 million or larger.

In addition, separate provisions of present law permit out-of-State acquisitions of both failed and failing mutual savings banks meeting the $500 million minimum asset size requirement and of savings and loan associations without any restrictions as to size.

I would also point out that current provisions of law allow the interstate or interindustry acquisitions of thrift institutions "where severe financial conditions exist which threaten the stability of a significant number of insured institutions or of insured institutions possessing significant financial resources."

Those provisions of existing law were adopted because Congress recognized the need for constructive preventive action to assure that a serious particular situation did not spread and get worse. The same motivation lies behind our present proposal.

While the present situation, in our judgment, requires some further extension of authority for interstate bank acquisitions, care has been taken to limit the scope of that authority and to provide a key role for State bank supervisers. In fact, the proposal before you dealing with commercial banks is substantially narrower than the interstate acquisition arranagements for savings and loan associations that now exist.

Perhaps the most imortant change in the proposed legislation would be to permit the Federal supervisory authorities to deal with the units of a multibank holding company as an integrated whole. This is a recognition of simple reality.

A number of States, including typically those impacted by adverse energy and agricultural developments, have a banking structure built around multibank holding companies. Normally, units in those holding companies operate with a large degree of interdependence under common management. However, the financial condition of different banking units within the holding company may vary substantially.

As things now stand, the law permits us to deal with those units of a holding company bank by bank. Some individual banks within the holding company may reach the $500 million size limit specified by present law, but many units may not. even though the holding company is one of the dominant institutions in the State. In some cases none of the units meets the present size test even if the holding company as a whole is far larger. Yet the failure of one or two important banking units of a holding company would be bound to affect the viability of the whole.

The proposed legislation deals with this situation by enabling the sale of some or all of the banks within a holding company or the holding company itself to an out-of-State institution when at least one-third of the entire assets of the holding company are in failing units or some combination of failed or failing units provided those troubled units collectively reach an aggregate size of $250 million.

The second proposal is to modify the asset size limit for an individual bank or for banking units within a holding company by reducing it from $500 million to $250 million. That reduction is in recognition of the fact that deeply troubled institutions of that size, particularly when incorporated in a larger holding company, may not in current circumstances be salable within a State. Indeed, in some cases the holding company involved may be among the largest banking institutions in the State. In other instances the larger institutions in the State, while able to cope effectively with their own problems, may not be in a position to raise the amount of capital or to provide the liquidity or management resources necessary for a major acquistion.

The third area of change would be to permit the sale of failing—defined as a bank in danger of closing—as well as failed institutions. The definition of failing is meant to be rigorous. That is, to include only an institution that, while technically still solvent, has no reasonable prospect for either maintaining the liquidity or raising the capital necessary to maintain itself as an independent institution without prolonged Federal assistance.

The purpose is straightforward. Such a failing institution may be more attractive to a potential buyer than one actually in receivership. The sale might be arranged without disturbance to confidence. There would be no cost or a lesser cost to the FDIC.

As I indicated earlier, the debate on the proposed legislation appears to center much less on questions of basic purpose and rationale, which seem to be broadly accepted, than on the appropriate specific limitations designed to protect the rights of States. This is a matter to which we have devoted considerable attention.

We believe an appropriate balance has been struck consistent with the need for operational effectiveness. That need includes the simple fact that out-of-State purchasers of failed or very troubled institutions will simply not be available or available only at very heavy cost to the FDIC unless the acquired banks can be operated profitably in highly competitive markets.

Specifically, interstate acquisitions could only be made of banks or units in a holding company system when their operation as an independent going concern is no longer feasible.

Only the chartering authority, State or Federal, as the case may be, could initiate the process of interstate acquisitions by determining the bank is failed or failing.

A minimum size requirement has been maintained, although at a lower level.

An out-of-State acquirer of a bank or bank holding company would have its subsequent expansion rights limited to the three largest metropolitan areas or cities within a State.

Perhaps most importantly, in all cases, consultation with the relevant State bank supervisor would be required as to the possibility of an in-State solution. In the case of a failing or failed institution, when the FDIC provides assistance bidding priorities of present law favoring an in-State solution are retained and an objection by a State supervisor could be overriden only by a unanimous vote of the FDIC board.

In the case of a failing institution where no FDIC assistance is provided, no interstate acquisition could proceed if the supervisor certifies that there is a qualified in-State or, when regional arrangements exist, regional acquirer unless the Federal Reserve Board determines that the proposed in-State buyer does not in fact have adequate financial resources.

Finally, the authorities provided would end after 5 years.

We believe these safeguards are reasonable and workable, balancing the legitimate concerns of the States and competing banks with the broader interest in effective action to deal with emergency situations. They build upon concepts and tests in existing law either for banks or thrifts. I am not aware of serious concerns that those existing authorities have been abused.

So far as the failing bank test is concerned, the intent is plainly only to deal with institutions that in terms of strong liquidity pressures or impaired capital would otherwise require large and prolonged official assistance if they are able to survive at all, with ancillary risks to the FDIC fund. In effect, the only alternative to merger would be to make them wards of the government for an indefinite period.

If such institutions were permitted actually to fail, it is widely accepted that they would be eligible for interstate acquisition. If that premise is accepted, the new provision for failing banks appears certainly reasonable as a matter of further protecting the FDIC fund and the stability of other banks that could be infected by a confidence crisis. Such a provision has already been adopted for thrifts. Strong preference would be provided for an in-State solution, if in fact such a solution exists. In fact, that protection would be stronger than if under current law the banks failed and FDIC funds were more directly at risk.

In all cases of failing institutions the board of directors of the stockholders of the institution itself would have to agree to a proposed merger.

Some have questioned whether that might lead to a preference for an out-of-State partner willing to pay a higher price. That is one reason that the relevant State supervisor has been provided an effective veto power so long as there is in fact a reasonable in-State partner ready, willing and able to provide the necessary capital and other support.

Other questions have arisen with respect to the necessity to deal with the units of a multibank holding company as a whole. In some instances dismemberment of a holding company may indeed be possible. But that will not always, or even typically, be consistent with achieving the purposes of the legislation: speedy and orderly disposition of severe problems in a manner consistent with the stability of the banking system over an entire State or region.

Specifically, in cases where the failed or failing units within a holding company are key units of the system, piece-by-piece disposition would imply that sister banks are cut adrift without the operating, accounting and product delivery systems often centered in lead banks of the holding company itself. Units that might have been both solvent and liquid within the holding company structure would find their viability undermined if they had to maintain themselves as independent units, units that would inevitably be tinged by their past association with a failed holding company organization.

Nor are units of a holding company likely to be attractive to potential out-of-State acquirers. The associated uncertainties and potential disruptions are precisely what the bill is designed to avoid.

In conclusion, Mr. Chairman, it is an unhappy fact that economic conditions in some States have brought strains and strong pressures on elements of the banking system in those areas. At the same time, there is every reason to believe those problems can be contained and diffused in a manner that will preserve and support the essential stability of the banking system and thus avoid aggravating already difficult economic circumstances in those areas.

To assure that result, supervisory and regulatory agencies do need some limited additional authorities so that they can act with dispatch and at minimum cost, both in financial terms and in terms of maintaining confidence. Those authorities would be provided by the bill before you.

The bill has been carefully drafted to limit its scope totally to emergency situations for a limited period, at the same time reconciling conflicting demands of public policy.

Congress in the past has acted with care and effectiveness in providing necessary authority to deal with problem areas in both the banking and thrift industries. Failure to act now could only increase the risks that the ultimate costs would be far greater. We want to forestall a crisis, not pick up the pieces after the damage has been done.

Therefore I strongly recommend you take the crucial further steps required by the present situation with the clear sense of urgency the situation demands.

[The prepared statement of Chairman Volcker and responses to questions of Chairman St Germain may be found at the conclusion of the hearing in the appendix.]

Chairman **St Germain**. Thank you, Mr. Chairman.

I might observe that when you compare the acquisition powers as far as commercials are concerned to those that apply to S&L's, we have to recall that S&L's had the authority and power to branch interstate for many, many years.

The thing that causes me to pause is the fact that I do not think it is a good thing to compare the two, because certainly those acquisition powers in the case of S&L's have not solved the dilemma that FSLIC has been facing for a long period of time. So I do not think that we can compare those two and say that that is an argument for or this should indicate that we should be able to do the same in the case of commercials. As a matter of fact, if we wanted to see parity, a level playing field, an expression some like to use, then rather than going from $500 million to $250 million you should recommend a bill that just removed that cap entirely.

Mr. **Volcker**. If you want to propose that amendment, I don't think that we would object.

Chairman **St Germain**. That is intellectually what you should have done when you sent the bill up, if you are comparing the two.

Mr. **Volcker**. To achieve complete parity, that is correct, Mr. Chairman. But let me say this. I think this authority for the Federal Home Loan Bank Board and FSLIC has not solved all the problems of the savings and loan industry, but it certainly enabled them to take care of some difficult situations more expeditiously. I do think these industries have become more and more parallel over the years; there have been more similarities than differences as the years have passed.

Chairman **St Germain**. One of our witnesses will be testifying shortly, Mr. Petty, of Marine Midland, and he is chairman of the Association of Bank Holding Companies as well. According to his testimony, the legislation before us will have very little effect, and I quote:

> A scooter or perhaps even a moped of investment will be facilitated by these changes, a slight step-up from the foot traffic so far. Modifications to cause enough traffic for Fords and Plymouths is recommended. The Mack Truck drivers won't even bother to start their engines.

I guess you could look upon Marine Midland, Chase, Citicorp—I would like to mention them all; I hope the others won't feel insulted—as the Mack Truck drivers.

Did the regulators discuss this legislation with the potential acquirers to determine whether they stand ready, willing and able to reduce the energy, real estate, and agricultural bank problems by acquiring failed institutions under the terms of this legislation?

Mr. **Volcker**. I have not discussed it with them in any detail, although the general concepts here have been under discussion for some time in a general way. I think one of the questions is how attractive some of these situations may be for banks out of State, and that is one of the balancing questions that we have had in developing the legislation, to make it reasonably possible and attractive in these situations for an out-of-State buyer.

I am convinced that there will be some interest out of State in some of these situations. Certainly you greatly broaden the potential base of acquirers through this provision.

What we are concerned about is, specifically, that in some States there may not be ready, willing and able intrastate purchasers. The whole purpose of this thing is, in those instance, and only in those instances, to expand the potential acquirers, and I think it achieves that.

Chairman St Germain. Mr. Chairman, yesterday we heard from a representative of the Conference of State Bank Supervisors. That witness suggested a number of changes but also implied that that particular organization is not convinced of the emergency nature of the legislation. I am not saying that they were right or wrong.

However, I did write you last week and asked you for some basic information on the dimension of the problem we face, and I asked what is the number of institutions that would qualify under the bill's "in danger of closing" clause, and your response was:

> A determination of the number of institutions presently qualifying under the legislation's definition of 'in danger of closing' would require a detailed examination of each bank by its chartering authority, and would depend significantly on the particular facts of each case, including the type of problems faced by the bank and its capital position.

Staff met with the FDIC Thursday or Friday of last week, and though the wording wasn't the same, essentially it was a nonanswer just as this one is. Have there been any recent examinations of those banks that are perceived of or thought of as being potentially in this problem area? Who actually has the numbers that would indicate to us what the necessity and the emergency nature of this legislation is?

Mr. Volcker. Let me make a couple of comments in response to your question, Mr. Chairman. We would not expect that this legislation would have to be used in a great number of cases. Ideally, it wouldn't be used at all. But we need it for a limited number of cases that, unless handled expeditiously and smoothly, could be quite disturbing to a series of other institutions in that area which intrinsically should be able to handle their own problems but would be faced with quite a different situation if they had to handle their own problems in the context of a general deterioration of confidence arising out of what I will call the messy failure of a particular and sizable institution. So we are not necessarily talking about a great many institutions.

I don't think it is possible for us, nor would we want to, identify particular institutions that might possibly be candidates for this kind of treatment. But I think we are aware that, in these areas that I mentioned in particular, in certain agriculture and energy States, there are some troubled institutions that might in time fall into one of these categories. I hope there are not very many of them.

Chairman **St Germain**. My time has expired, but I have one real quick question. Would adoption of this legislation minimize the importance of and necessity for H.R. 2707, the interstate banking bill that has been residing in and went from a short-term lease to a long-term lease in the Rules Committee?

Mr. **Volcker**. If you had that interstate banking bill, I suppose this would not be necessary.

Chairman **St Germain**. My question is, if this were to be enacted, would the importance of the interstate banking bill wane considerably, diminish considerably?

Mr. **Volcker**. Only, I think, very marginally if at all. I think this is directed toward a very limited set of emergency situations. That bill is directed toward the general banking structure of the country. That bill looks a little different; I don't think less logical. It looks better, in a sense, because of the rapidity with which States themselves are moving toward interstate banking, either generally or through substantial regions of the country. So we have had considerable movement in that structural area, so to speak, toward interstate banking.

In my mind, it simply makes that bill more logical, to set out a Federal pattern for those activities, but certainly there has been a lot of movement in that direction in the past year or two, incomparably more movement than would be implied by the passage of this bill.

Chairman **St Germain**. Mr. Barnard.

Mr. **Barnard**. Thank you, Mr. Chairman.

Mr. Volcker, we have had some very glowing remarks said throughout these hearings about the original Garn-St Germain bill and the fact that it has been extended any number of times. I sort of look upon that as one of our very topical subjects of discussion today, and that is containment domes. After we had our situation in the Soviet Union we have been talking about containment domes on nuclear power plants. I sort of look at Garn-St Germain as the containment domes that are there not necessarily for the daily operation but for cases of emergencies.

Mr. **Volcker**. Precisely.

Mr. **Barnard**. I really think it has a very worthwhile purpose, although I might reiterate what the chairman has said. Up to this time, of the six or seven witnesses we have had come before us, four have said that we don't need the bill, two consumer groups, the Independent Bankers Association and the CSBS. Of course I questioned them at length yesterday as to whether or not they had counseled with you and the FDIC and FSLIC. I don't really think that they have done it to that degree. Anyway, I am delighted to have your testimony this morning.

Mr. **Volcker**. If I may interject, Mr. Barnard, I think I read some of their testimony. I didn't read all four. I did read the Conference of State Bank Supervisors and the Independent Bankers Association, and they have had a different sense of urgency, but I thought their specific remarks were directed more toward the degree of protection given States in the process rather than toward questioning the basic rationale.

Mr. **Barnard**. My impression was that a lot of things have changed and the emergency situation that was here was not nearly as expressed by the Federal regulators and that possibly we could just sort of idly stand by and watch how things would progress to see if it wouldn't improve. I sort of got that idea, Mr. Chairman.

Chairman **St Germain**. Would you yield for half a second?

Mr. **Barnard**. Sure.

Chairman **St Germain**. Mr. Chairman, I would say that beauty is in the eyes of the beholder. The way I listened to and read their testimony was, well, when they know they are facing the onslaught and the power and the persuasiveness of Chairman Volcker, they realize, oh boy, we have got a tiger by the tail. I read their testimony as trying to mitigate the effects rather than agree.

Mr. **Volcker**. I start with a different presumption. It could be read differently.

Mr. **Barnard**. Mr. Chairman, anybody that has been on this committee as long as some of us have know that we can expect the testimony; we know exactly what they are going to say before it is ever said, so no new ground has been plowed as far as I am concerned.

What kind of time schedule do you think this committee and the Senate Banking Committee ought to put on this legislation?

Mr. **Volcker**. I would like to see you act very promptly and just take this bill for what it is—a piece of emergency legislation—and pass it.

Mr. **Barnard**. Do you think it ought to be commingled with other legislation?

Mr. **Volcker**. No; given that context, I think it just ought to go ahead by itself. I don't think this is part of any general structural reform of banking, whether you are talking about the interstate aspect that the chairman mentioned or other aspects of needed structural change in banking. I very much would like to see progress in those areas. But I think this is a distinct, special piece of legislation that should move ahead very promptly on its own.

Mr. **Barnard**. Mr. Chairman, in view of what is happening in the country through the regional compacts and other such situations as well as the Garn-St Germain for savings and loans, do you see that we are in this bill creating such precedent that it is just going to be bad for the country?

Mr. **Volcker**. I really don't, Mr. Barnard. I think this is so limited in terms of its interstate potential that in fact, however critical, the number of institutions and the size of those institutions that are going to be affected pales into insignificance compared to those other developments that you mentioned—the movement toward regional or full interstate banking at the initiative of States, what is going on in the savings and loan industry—and those are rather sweeping developments. This is very limited.

Mr. **Barnard**. Mr. Chairman, several times up until now we have talked about the fact that this bill is going to take advantage of States rights, that we are going to be imposing upon States certain provisions that they just cannot tolerate. In your explanation of the bill this morning I got, I think, a pretty satisfying explanation that, No. 1, if it is a failing institutions you are going to give the State supervisors certain opportunities, but then the FDIC Board would have the last authority if FDIC money was going to be involved, but that in failing institutions where the FDIC money wouldn't be involved, then the State would have the last say-so. Isn't that the way it works?

Mr. **Volcker**. In some sense, I suppose the Federal Reserve Board would have the last say-so. The only place that question would arise is if a State supervisor came and said "we have a buyer, we have an in-State buyer, we think he is OK." We would then be obligated to approve that transaction unless we reached the independent judgment that that institution was too weak financially or managerially to take it over. It is only that kind of final safeguard which is, I think, inherent in our general holding company power of approval that would override what, I think, would be in effect a veto by the State supervisor. It could only be overridden if, in fact, the potential intrastate acquirer did not, in our judgment, have the resources necessary to complete the transaction and maintain the combined institution in a viable, safe, and sound form.

Mr. **Barnard**. What happens to the highest bidder concept? What if you have an adequate bidder within the State but you have got a higher bidder outside the State?

Mr. **Volcker**. With no FDIC assistance, the bidder in-State gets it.

Mr. **Barnard**. Mr. Chairman, why was the farm bank situation not addressed in this bill? I am talking about the smaller banks; I am back to the first question that Chairman St Germain asked this morning. What is the magic of the $250 million threshold?

Mr. **Volcker**. There is no magic about the $250 million, but this seemed to be a reasonable compromise, so to speak, between no limit—which in the eyes of States would have raised a greater threat—and the need to be effective. The presumption is that if you are less than $250 million you will be able to find an intrastate solution. That is just a matter of judgment.

Mr. **Barnard**. Let's take some of the real small farm banks in the Midwest. In some of those communities that is the only bank in that community. If we could save banking in those communities by pinpointing farm banks in the failed or failing situation and permit those acquisitions so that they could maintain those banks, what would be wrong with that?

Mr. **Volcker**. I wouldn't have any opposition to that. You have to balance that against concerns of those States. I wouldn't in principle have any objection to that.

Chairman **St Germain**. The time of the gentleman has expired.

The ideal man to follow up on that questioning is the next member who will be questioning, Mr. Leach of Iowa.

Mr. **Leach**. Thank you, Mr. Chairman. I wasn't going to follow up on that, but I appreciate being defined in those terms.

Today's paper notes that regulators are going to come to Congress to ask for a $15 billion solution to the FSLIC fund, involving, among other things, zero-coupon bonds. Is that an approach you support?

Mr. **Volcker**. I have not seen that approach in detail. It is a matter for the Federal Home Loan Bank Board, and they have been working with the Treasury. I have not seen their completed plan. I understand the concept; I understand the purpose; and I think it could be constructive, but I have not seen the plan itself.

Mr. LEACH. Coming back more specifically to our problems, I have been reading some of the testimony of the various groups. Whether they support or oppose, I think differences are somewhat on the quibbling arrangements, although the quibbles have some philosophical proportion. For example, on the issue of lowering the threshold from $500 million to $250 million, one of the questions is how many banks does that apply to, and second, did any of the failed banks in the last year fall in that range.

Mr. VOLCKER. I can tell you how many it applies to in kind of a mechanical way, but that is a gross exaggeration of what it would ever apply to. I think there are 440 insured banks around the country that technically are between $250 million to $500 million, but obviously the enormous majority of those are not failing or in danger of failing. You have the problem further of looking at holding companies, and this is relevant, frankly, for a State like Iowa where individual units may be less than $250 million but conceivably you can get an addition of smaller units up to $250 million, which this bill would permit you to take care of; that is, indeed, one of the purposes.

Mr. LEACH. Let me be more specific. We have in my State one particular institution that has received a great deal of publicity in the Wall Street Journal and elsewhere called Hawkeye Bank Corp. Would this particular approach have any direct relevance to that?

Mr. VOLCKER. I hate to talk about any individual institution, but, yes, it would be very relevant for a holding company that is a sizable institution, one of the largest institutions in a State but made up of a lot of smaller units a number of which are troubled. That is precisely the kind of situation that this bill would enable us to take care of, that kind of conceptual situation that we cannot take care of under the current bill.

Mr. LEACH. Alternatively, the IBA has suggested that instead of lowering the threshold that regulators ought to be given the power of naming the top four, size-wise, institutions in the State. Is that approach particularly different than your approach?

Mr. VOLCKER. No; I think it is another way of getting at the same kind of point. You have got institutions in a State that can easily be acquired intrastate; and I don't want to endorse the number four. But you could go on that approach and I would be perfectly happy to look at it and suggest to you an appropriate number that would accomplish essentially the same purpose.

It is certainly true that this bill, I think, will have virtually no application for, let's say, a $250 million bank or a $500 million bank in a large State with statewide branching. You would expect to find an in-State solution fairly easy. It is in those areas where you can't find or don't expect to find that in-State solution so easily that are really at issue here, and that problem could be approached in the other direction. But I think you would want to use more than four, so long as it was not a substitute for the $500 million test or whatever aggregate size test was in the bill.

Mr. LEACH. IBA has also suggested that the definition might be more narrowly drawn. One of their ideas is to suggest a 1 percent capital ratio. Maybe a bank would have been closed before reaching that. I don't know if that is a helpful definition or not. Would you care to comment?

Mr. **Volcker**. I personally do not think it is very helpful to try to have that kind of specificity. When you get to the point that a bank is in danger of failing, assessing its true capital position is partly a matter of judgment.

I think the intent here is quite clear, that we mean to deal with banks that have no reasonable prospect of surviving on their own, although they may not be technically in a failed condition at that particular point in time. I think you know a bank in that position when you see it, and applying a specific statistical test is not very helpful.

Mr. **Leach**. Mr. Chairman, my time has expired. I would only say that there are some specific situations in the Midwest and particularly a substantial one in my State that I think this kind of approach is well warranted toward. There might be some subtleties of changes that might be considered, but I think the general thrust of the Chairman's approach makes a lot of sense for the Midwest today.

Thank you.

Chairman **St Germain**. You say you don't want specificity as far as failing institutions are concerned, or in danger of failing. Has your eminent legal department given you an opinion as to whether or not there would be injunctive relief available to the institution if the stockholders of that institution took issue with the appraisal or the determination by regulators that an institution is in danger of failing under this legislation as it now stands?

Mr. **Volcker**. In the case of a failing institution, the directors, and presumably ultimately the stockholders, would have to approve the merger, so you would have their approval on the line.

Chairman **St Germain**. One dissident stockholder could not go in?

Would you ask your eminent legal staff to give us a memorandum on that?

Mr. **Volcker**. I will be glad to.

Chairman **St Germain**. Fine; I think that would be important to you as well as to us.

[In response to the request of Chairman St Germain, the information was submitted by Chairman Volcker and may be found at the conclusion of this day's hearing.]

Chairman **St Germain**. Mr. Vento.

Mr. **Vento**. Mr. Chairman, I don't know if you just asked this question. Maybe I misunderstood. Are you suggesting, Mr. Volcker, that the State regulators would have to approve of any of these mergers?

Mr. **Volcker**. A State regulator would have a role in the process.

Mr. **Vento**. I just want to know. Do they approve or not? I am not interested in consultation and advice. I want to know. We had a little bit of a debate and we want to know what the intent here is, if a State regulator has to approve or not.

Mr. **Volcker**. You have got several different possibilities here. In the case of a failing bank without FDIC assistance, the State supervisor would essentially have a veto power in favor of an in-State solution so long as he came up with a bank in the State that, in the judgment of the Federal Reserve, has the financial capacity to take it over.

Mr. VENTO. That's under the existing law, isn't it?

Mr. VOLCKER. No, that is not provided for in existing law at all. The existing law does provide that a State supervisor be consulted and have an opportunity to come up with in-State bidders. This is with FDIC assistance. This provision would be retained.

In the proposed law you have to go through a bidding process that gives the in-State bank a chance to bid and rebid in the light of an interstate bid. If the FDIC approves an interstate transaction over the objection of a State bank supervisor, it has to be by unanimous vote of the FDIC, so the procedures are different if the FDIC is providing assistance than if they are not providing assistance.

Mr. VENTO. You are saying that if the FDIC does not provide assistance today that the State regulator does not have the power to sell the bank?

Mr. VOLCKER. It cannot be sold interstate unless State law permits it, so we are just talking about the interstate provision here. The State supervisor, when there is no FDIC assistance, would have a very strong role.

Mr. VENTO. I want to reiterate the chairman's concern about the magnitude of the problem, and I will get to that in just a moment.

In other words, it is your position that we ought not to deal with any of the other factors, that is, the bank power factors, the deregulation factors that may be contributing to the health of the banks. We won't say it is the only factor, but you are saying we ought not to deal with that.

Mr. VOLCKER. I think you ought to deal with it but not in this context.

Mr. VENTO. How will these interstate mergers affect the health of the other banks that remain in the States? Do you think they have any effect at all, Mr. Volcker?

Mr. VOLCKER. I think this is designed to help the other banks in the State by avoiding what otherwise could be a disturbing banking development within that State that would undermine confidence and make it more difficult for those banks.

Mr. VENTO. I understand that factor. In other words, we are saying that we are going to use the interstate option as a solution.

I don't think any of us want to see failed banks or unhealthy banks functioning. There are other options that could be used. You could use the insurance fund to bolster them; you could change the directors. There are other powers that the regulators have, clearly. You could put them under a managerial scheme. There are other powers that we have. Nobody is suggesting that we abandon them or don't address that. We are talking about the effect that the interstate banking power that would be granted in this case would have.

First of all, it has a significant value. We have talked about that value, sort of the windfall that occurs. Do you favor that windfall being taken away or not accruing to the benefit of the stockholders?

Mr. VOLCKER. That is something you could look at, but you have got to get the stockholders to approve and you have got to balance their interest in a reasonable solution.

Mr. VENTO. That is a big financial incentive for them to approve an interstate type of merger. Because they are going to come in with a lot of money, it makes that bid a much more attractive one for them to approve.

Mr. **Volcker**. That is undoubtedly true. From the stockholder's standpoint, he may find it more convenient to take the out-of-State bid, but the bank itself has to look for an in-State solution first, and he has got the State bank supervisor looking over his shoulder, and he can say, "Look, I've got an in-State fellow and you have got to take his bid."

Mr. **Vento**. Once this is done it wouldn't open up the State to interstate banking, would it?

Mr. **Volcker**. Not for other banks.

Mr. **Vento**. So it really has a significant value in that particular case.

Mr. **Volcker**. There are limitations on the expansion that that acquired bank can do within the State after it is acquired. The limitation is to the three major metropolitan areas or cities within the State.

Mr. **Vento**. Can you tell us the States that this is focused on? How many States now would prevent interstate banking that this new power would be focused on? Can you tell us that?

Mr. **Volcker**. I would say there may be 8 or 10 States.

Mr. **Vento**. In other words, this legislation is focused on those 8 or 10 states primarily.

Mr. **Volcker**. The legislation would apply nationwide. As a practical matter, it is most relevant for States having statewide holding company systems or unit banking systems.

Mr. **Vento**. I know, but that is what it is aimed at, those specific eight or nine States.

Mr. **Volcker**. That's right.

Mr. **Vento**. Thank you, Mr. Chairman.

Chairman **St Germain**. If those States did not have the unit banking system, would the legislation be as necessary as it is?

Mr. **Volcker**. I do not think it would be as necessary. I still think we might want to reduce the size limit, but you would then more simply use the existing emergency provisions.

Chairman **St Germain**. That is what I was thinking. Therefore, in a sense, the necessity of this legislation is occasioned by the intransigence of some States to change their own State laws as far as unit banking is concerned.

Mr. **Volcker**. I do not know that I would want to characterize it necessarily as intransigence, but it is certainly related to the banking structure of some States, combined with the fact that some of them are simply of relatively small size. There is nothing they can do about that. You can therefore get a relatively dominant bank within a State, looking at the State banking structure, that isn't very big. While the bank on a national scale is not very big, there is nobody else in the State big enough to comfortably take it over.

Chairman **St Germain**. Mr. Roemer.

Mr. **Roemer**. Thank you, Mr. Chairman.

Louisiana, of course, Mr. Volcker, is a State that has to be included on that list of eight or nine that Mr. Vento elicited from you, and I appreciate your statement.

One of the complaints from banks in my State of you and other regulators is that given the tough times in agriculture, given the tough times in land asset devaluation, given the tough times in energy at the moment, that what many of the banks need are some time to work out of their problems, and the regulators seem to be robotized in their application of the regulations.

I don't know that that is true. I have heard that on multiple occasions over the last year, where bank after bank says that the long-term value of their assets is solid, that the community is not going to disappear, that energy prices will stabilize at a somewhat higher price than now, that the agricultural prognosis is much better now than it was 2 years ago, but yet the regulators are coming down hard on them.

Would you address that prognosis?

Mr. VOLCKER. I would be glad to.

First of all, I don't think the charge is relevant to the Federal Reserve anyway. I can only speak directly to the Federal Reserve. The bank supervisors collectively took some actions a couple of months ago to clarify our approach toward these problems, particularly in two directions.

I certainly believe capital is there in good part to be used on a rainy day; but capital ratios could go below normal under the kind of pressures that you describe as long as the bank is basically viable and has a good outlook, a reasonable outlook for restoring its position over a period of time. In that case, those capital ratios could be eroded without running into supervisory problems, although we would certainly want to be in contact with the bank about its planning for restoring its position.

Second, we provided fresh instructions to our examiners collectively as to how to deal with restructured loans in either the agriculture or the energy area that follow a generally accepted accounting practice but one that provides, I think, quite an understanding treatment of those loans, specifically of restructured loans. If the stream of payments on a restructured loan are equal to the capital of the original loan, no write-down of that loan is required. Of course, if the restructured loan has lower interest, let's say, over a period of time, which may be a normal result, the impact of that on earnings is going to be reflected over time in the lesser interest accured. But there would be no write-down if the restructured loan was itself judged to be a sound loan, and that the borrower could meet the terms of the restructured loan.

So there is a lot of leeway there for maintaining balance sheet valuations in cases where the restructuring of a loan can be in the interest of both the bank and the borrower and puts the credit on a sound basis, even if at substantially lower interest rates or even with some forgiveness of principal.

Mr. ROEMER. Let me push it a step further. I couldn't agree with you more that our responsibility is to maintain the integrity of the system and we wouldn't want to do anything to lessen that integrity. But do you think it is within the power and capability of the regulators to have that kind of item-by-item, case-by-case judgment as to the applicability of the regulations on write-offs or write-downs, et cetera, et cetera? Are we capable under these times of crisis of that kind of regulatory management?

Mr. VOLCKER. I think we are. All of this involves big bureaucracies through the examining staffs, and I understand the concern that arose that there might be some tendency in these conditions to take an even harsher view.

Mr. **Roemer**. That is what we are seeing, Mr. Volcker. That's what I am telling you.

Mr. **Volcker**. I doubt if you are now. I don't know whether there was any justification for that accusation earlier. We introduced procedures within the Federal Reserve so that these loans could not be classified without supervisory approval up the line from the examiner. That is an extraordinary procedure, but we introduced it precisely to protect ourselves against any concern of overreaction of that sort. We did that a long time ago.

These new rules are quite specific. The examiners have all been informed with great care, and I have not heard any real complaint, since those clarifications were issued a couple of months ago, about that approach.

Mr. **Roemer**. I appreciate your answer. I want to congratulate you. I read David Stockman's book over the weekend. You were about the only person there who got favorable comments. I don't know whether that is good news or bad news. I did notice that you and his mother were the only two. I don't know what your relationship is to him. [Laughter.]

Thank you, Mr. Chairman.

Chairman **St Germain**. Mr. Shumway.

Mr. **Shumway**. Thank you, Mr. Chairman.

Chairman Volcker, as I listened to your testimony, it seemed to me that you were saying, particularly with reference to banks with heavy commitments to the energy and farming sectors, that they have a traditional strength that they can draw upon, and to the extent that there may be a shortfall in that regard, that you, the Fed, can give them some assistance through your discount window and other devices available to you. So you are not asking for this legislation necessarily to bolster your ability to be of service in that regard.

Mr. **Volcker**. No.

Mr. **Shumway**. But I think you said that you want the bill more to provide assurance, to prevent the loss of confidence that might otherwise come from providing that assistance; is that correct?

Mr. **Volcker**. I think this bill, frankly, would be useful if we never used it specifically, if we never had to use it, because it would provide some assurance, if that question arose, that we do have adequate powers. I do not think we are going to have to use it in very many instances, in any event, but when you have to use it, you have to use it. That is the issue here.

Mr. **Shumway**. I am trying to find some justification for the position that was taken yesterday in testimony by the Conference of State Bank Supervisors and others, saying that they had not seen the statistical justification for this kind of expansion of powers or discretion on the part of the regulators. Could it be, therefore, that you are really not citing statistical justification as much as you are worried about stemming a loss of the confidence as reason for the bill?

Mr. **Volcker**. We are certainly worried about stemming a loss in confidence, and I think it would be completely unfair and unreasonable to put before you a list of specific names of banks that someday might or might not be in question in this connection, and we are not going to do that. At least I am not going to do it.

We do have some concerns that stem back to the point that you make about confidence. If we don't have the tools to deal with such a situation if and when it arises, given the general pressures in those areas, and given the nature of the banking structure, we have a problem, and a serious problem, that would otherwise be avoidable.

Mr. **SHUMWAY**. I think we share those concerns. I am just suggesting that perhaps one reason why there has been some misunderstanding on the part of some critics of this legislation is that they do not really realize what your primary purpose in urging it may be.

Because this bill has potentially far-reaching effects, it has engendered a great deal of controversy. Some have said that as an alternative to passing a bill to expand the provisions of the Garn-St Germain Act, we should simply give the FDIC authority to operate a bank for some period of time while a solution might be worked out. I know that you said in your testimony that you do not want to create wards of the government for indefinite periods of time. Is giving the FDIC that kind of expanded conservatorship authority with reference to troubled banks a realistic alternative to expanding the emergency acquisition legislation?

Mr. **VOLCKER**. I do not see it as an alternative, Mr. Shumway. It could be a complement. In dealing with some of these situations, it might be useful for the FDIC to have the authority to inject capital and operate the bank as a conservatorship or otherwise for a limited period of time, but that is no alternative for this legislation. It gives you a little more flexibility, a little more time, perhaps, for working out a more permanent solution, but that kind of thing is not a permanent solution. A truer alternative to this legislation would be simply to accept the implication that the FDIC is going to run some banks indefinitely, but I do not think that is really a satisfactory solution to the problem. I don't think we want to go in the direction of trying to solve these problems by basically, in effect, nationalizing some banks and leaving them in business. That's not the way we want to operate the system.

Mr. **SHUMWAY**. If that were the action of this committee, and Congress, would you still feel that the expanded regulatory ability that you are asking for is necessary?

Mr. **VOLCKER**. I would clearly see it as a complement, not as a substitute.

Mr. **SHUMWAY**. Thank you, Mr. Chairman.

Chairman **ST GERMAIN**. Ms. Kaptur.

Ms. **KAPTUR**. Thank you, Mr. Chairman.

Welcome, Chairman Volcker. I want to talk with you today about a conceptual problem I have with the legislation, not only in its attempts to deal with failed banks, but failing banks. Let me see if I can describe this for you.

The position we are in is that we in the government have to do something to ease the pressure on the banking system in certain States so people don't lose confidence. The banking system is merely a conduit for money out and back in. Even though we have structured ourselves as a country in a financial system, really we are talking about flows of money from certain people to certain other people. It seems to me that what this legislation is talking about is that certain businesses are going to benefit by actions that we might take here.

For example, it seems to me that the industries that might benefit by expanded powers would be those that are more concentrated geographically in certain areas. Certainly the oil and the gas interests of this country would benefit in some way, and those farmsteads in the Midwest, with all due respect for my colleague from Iowa, farmsteads in Iowa that are much less diversified, much more concentrated than, let's say, in my own State of Ohio. I see that they are the ones that are getting attention from Congress. If you are more concentrated, if you happen to have raw materials as the basis for your business, we give them attention.

What troubles me is that banks in my area and businesses in my area which may be more diversified than some of these other areas of the country are not getting equal attention. We have institutions holding loans from steel companies that are struggling to make it in view of the trade deficit this Nation is carrying; we have automotive companies struggling, the largest employer in my district threatening to leave; we have machine tool industries in trouble.

I guess I would like you to play out the scenario for me in a State like Texas which is both agriculture as well as oil and gas. I want to know who this is going to benefit if we expand these powers.

I don't see a State like mine getting anything out of this, and I see a lot of attention being devoted to these parts of the country and not so much to the industrial Midwest and the agricultural part of the Midwest that is more diversified.

Why should someone like myself vote for this?

Mr. VOLCKER. Insofar as this bill in itself is concerned, I think indirectly it will help to protect the economies of a State like Texas or Oklahoma or Iowa or Nebraska or Kansas, the kinds of States that have the banking structure of the sort that gives us problems under existing law. By providing further assurance of stabilizing the banking system in those States I think it indirectly is to the benefit of those States.

Take a State like Ohio. I don't remember exactly your banking structure. But where you have some sizable banks, in good condition, you talk about changing a size limit from $500 million to $250 million. In the State of Ohio, I would suspect you have got readily available in-State solutions to the kinds of problems that those banks might have. In concept, the bill would do the same thing for Ohio. But I think because of the structure of your State and the structure of your banking sytem you can get those same benefits in-State. The urgency of looking out of State in particular instances probably would not be there. Maybe it would be in some circumstances, but it is less likely than in other kinds of banking structures.

This bill in no way works against the interest of a State like Ohio. It does, I think, indirectly avoid a further blow to the economies of some other States, but I certainly think it is consistent with the general interest.

Ms. Kaptur. If we were not to adopt this legislation what would happen?

Mr. Volcker. Nobody can tell you that precisely. What I would be concerned about is that we don't have an important element of insurance against dealing with a quite possible problem in some of these States within the framework of that State where you have a sizable institution in deep trouble, and you don't have the instruments for dealing with that problem without provoking a failure, which could have ramifications on other sound banks.

Ms. Kaptur. Wouldn't the benefits by passing this legislation ultimately accrue to certain businesses?

Mr. Volcker. I think they accrue to the country. You don't confine these problems within a State, either, once they begin. But it only accrues to those particular businesses inasmuch as consumers, businesses, everybody has an interest in a stable banking structure.

I don't think you could be absolutely confident, if you had a difficulty that centered on one State or another, that that wouldn't be affecting banks elsewhere, including in Ohio. You have some example of the way these things can spread in Ohio.

Ms. Kaptur. I certainly have, and I know how that problem was solved. I just wish that we could have as much attention to some other industries in this country that are struggling for their lives right now.

Mr. Volcker. That problem by its nature was solved by a substantial injection of State money. I think we can solve these problems not only without official money, but, at least in cases where the FDIC does get involved, by minimizing their cost rather than maximizing it.

Ms. Kaptur. Thank you.

Chairman St Germain. Mr. Manton.

Mr. Manton. Thank you, Mr. Chairman.

Mr. Volcker, last year this committee considered H.R. 2707, the interstate banking bill, which remains in the Rules Committee. At that time it was clear that the same regions of the country which now have problem energy and agricultural loans, the Southwest and Midwest, primarily, strongly opposed the provision in H.R. 2707 to allow nationwide interstate banking to occur in 5 years. This opposition, in the main, was directed at the large money center banks, many of which are located in my home state of New York.

Under the regulators bill, in an unassisted acquisition the State bank supervisor would be given, as you have suggested, almost a veto power to object to a proposed interstate merger or acquisition.

Mr. Volcker. If it is unassisted.

Mr. Manton. In the case of an FDIC assisted acquisition the FDIC could allow the acquisition to go forward only by a unanimous vote of the FDIC's board of directors.

Given the fact that there are representatives from the Midwest and Southwest on the FDIC's Board and the requirement of unanimity, wouldn't this bill effectively thwart the ability of the so-called money center banks to be able to purchase failing banks in these regions?

Mr. Volcker. I don't think so. This bill has been developed by all the regulators working together, and I think there is a clear, mutual recognition of the possibility that conditions could arise that would necessitate using these provisions. I couldn't imagine, if those circumstances arose, that a member of the FDIC Board would take the position that it offended his or her philosophical sense of interstate or attitudes toward money center banks when they have all participated in the writing of the legislation.

Mr. **MANTON**. It seems to me that having a requirement of unanimity as opposed to perhaps a two-thirds vote is a flaw in the bill and it would be better crafted if we eliminated this requirement.

Mr. **VOLCKER**. It is part of achieving a reasonable balance with the concerns of the States and how the Congress in its wisdom wants to reconcile these two conflicting criteria. Certainly the bill is perfectly workable without that.

Mr. **MANTON**. Thank you.

Chairman **ST GERMAIN**. Mrs. Roukema.

Mrs. **ROUKEMA**. Mr. Chairman, I will be very brief. I do appreciate the validity of your statement here and the conciseness of it today.

Regardless of whatever fine tuning we may ultimately determine in the final version of this bill, I am concerned about the pejorative headline in today's paper concerning the proposal of the regulators which you have essentially endorsed, if not in fine detail, in principle. The pejorative is that it is identified as a $15 billion bailout. How do you, Mr. Chairman, respond to that?

Mr. **VOLCKER**. I have not been involved in drafting that legislation. I am familiar with the details. It certainly seems to me within the framework of an industry self-support arrangement.

Working through FSLIC, the funds that would be advanced to FSLIC, first of all, come out of an institution or are supported by an institution which is itself part of that framework in which the savings and loan associations—who themselves, in effect, benefit from the home loan banks—use some of that capital to support FSLIC. You are helping the industry through another arm of the same support structure, all of which, in the end, is supported by assessments on the industry itself. You can call any insurance scheme a bailout, but this is an insurance scheme financed by the industry.

Mrs. **ROUKEMA**. Mr. Chairman, I just wanted to give you the opportunity to comment, because I think it is unfortunate, particularly in the context of the budget debates and Gramm-Rudman, to refer to this as a bailout. I don't think that is an accurate characterization of what we are about here in this bill.

Mr. **VOLCKER**. A very large part of the motivation for that particular plan is to avoid a drain on the budget.

Mrs. **ROUKEMA**. Thank you very much.

Chairman **ST GERMAIN**. Mr. Frank.

Mr. **FRANK**. Thank you.

Mr. Chairman, I appreciated your answer to Ms. Kaptur that what we are trying to do here is to provide help to the banks in some States, and I think it is one country more or less and we ought be willing to do that. But we have some of the States resisting help. To a certain extent you are in the position of the lifeguard swimming out there and getting whacked over the head by the drowning person.

I wonder whether we might try something like this. What if we said to the various States, we will give you the option. We will give the regulators the power along the lines you are talking about, and we will just say to the States, now, if you don't like this, that is OK, you can opt out of it, in which case all you will get is your insured depositors will be paid off, and good luck to you.

Mr. VOLCKER. That is one posssible approach. It makes me a little hesitant because the consequences of that approach may affect more than people in that State. If you could assure me somehow that the fallout would be confined within the State, I think that is a very reasonable proposition. But like nuclear fallout, sometimes it extends itself.

Mr. FRANK. I think we ought to be doing two things. One, try to make it harder for banks to fail, and at the same time make it easier for banks to fail. One of the things I think we ought to be doing is to try to come up with some policies that will give banks the privilege that every free enterprise ought to want to have, which is to fail, and make that a little bit easier.

Mr. VOLCKER. I haven't perceived that we have had a problem of that sort recently, Mr. Frank.

Mr. FRANK. I think we have, because we keep rushing in and bailing them out. If banks were grocery stores, you wouldn't be here. We don't have the grocery store reserve board coming in here and saying, gee, there are some grocery stores in Midland going under and we had better bail them out.

Mr. VOLCKER. You make a distinction between protecting the depositor and protecting the stockholder.

Mr. FRANK. All right. Let me just ask you about the stockholders. I know in Contintental ultimately, as I understand it, the stockholders' equity was wiped out. What is the general principle here with regard to stockholders' equity?

Let me ask you a specific question. Would there be any problem in writing into this that one condition of any of this would be that before any Federal funds go in from any of the depository insurance funds, et cetera, that the stockholders' equity goes first?

Mr. VOLCKER. I think this would be more relevant to the FDIC. You're talking about the FDIC assistance.

Mr. FRANK. They are in this bill too. We are talking about the whole bill.

Mr. VOLCKER. When FDIC assistance goes in, a very important consideration for them is, and should be, that they in effect get paid before the stockholders, as much as possible.

Mr. FRANK. I apologize if my diction has interfered with communications. Let me ask it again. I know you are not the FDIC. You are not either a totally uninvolved bystander; you are here on behalf of this bill.

I think we ought to make it a condition of any of this that before we have any of these extraordinary efforts by the various regulatory agencies to extend money the stockholders' equity has to be drawn down first to zero and then we talk about extra.

What is your opinion of that?

Mr. VOLCKER. I think you would have to distinguish between the bank that has assistance and the one that doesn't, and this bill includes banks that would not have FDIC assistance.

Mr. **Frank**. I thought I did that in my question. If I asked the question badly, I don't want you to answer it. Let me ask it again. I apologize. I asked it badly apparently, if that is what you heard. So I am going to try it one more time.

If the bank is not going to get any money, then I don't want to take the stockholders' equity. I agree with that. We are not going to take away all the equity. But if there is a proposal for a specific bank to get funds to be paid off, should we then not say that first the stockholder equity goes and then we will pay off the rest?

Mr. **Volcker**. I think as a general proposition that is the way it works.

Mr. **Frank**. Would there be any problem with writing it into the statute, then?

Mr. **Volcker**. That is where I am a little hesitant.

Mr. **Frank**. I noticed that.

Mr. **Volcker**. I would want to see whether you could write the statute so that in every condition there is no possibility of a stockholder getting anything.

Mr. **Frank**. I think, by the way, we would make it easier to do this, and I think Mrs. Roukema was being constructive in trying to give you a chance to deal with these. In Continental, I don't think people understand the extent to which the stockholders were, as I understand it, wiped out.

Mr. **Volcker**. The reason I am hesitating is precisely because I am thinking of something like the Continental situation where the stockholders were in effect wiped out. But there were some conceivable outcomes of situations where they did get FDIC assistance where the stockholder would have gotten some residual value. It didn't work out that way, or it doesn't look like it is going to work out that way, but that was not impossible.

Mr. **Frank**. I am saying that ought not to be an appropriate goal. I understand that banks are not grocery stores, and therefore we are going to have to do some extraordinary things in the case of banks, but I think you make it easier to do that if you would say that the stockholders' equity goes first.

Mr. **Volcker**. I agree with you as a general proposition. My hesitancy is only whether you can reasonably write that bill and have it workable, particularly with an open institution, such that in every conceivable set of circumstances it reaches that result or indeed should reach that result.

Mr. **Frank**. I think it should. I guess the way to get you on the specifics will be to draft something and take your comments on that.

Mr. **Volcker**. I don't disagree with the thrust of what you are trying to achieve. I am not going to give you a blanket endorsement without seeing the wording.

Mr. **Frank**. You came closer than usual, so I will quit with that.

Chairman **St Germain**. Just as there are many who are not giving blanket endorsement to the vagueness of failing or in danger of failing.

Ms. Oakar.

Ms. **Oakar**. Thank you, Mr. Chairman.

Mr. Volcker, it is good to see you again. I am sorry I wasn't here for your testimony, although I have it.

Preston Martin testified before this subcommittee on April 9, and he talked about the 11 farm banks which failed in 1985, that the FDIC had to liquidate which is a costlier action. In total, the FDIC was forced to liquidate about 22 banks last year. The largest had $31.6 million in deposits. In your legislation, how many of the 120-bank failures would have been handled according to the provisions of this emergency legislation? Would you have addressed those 120-bank failures?

Mr. **Volcker**. No; most of those 120 banks would have been well below even this $250 million size limit. I don't have right in front of me the size classification of those failing banks, but very few of them would have even arisen here.

There was an interesting case in New Mexico, which has a holding company statute, with one of the largest bank holding companies in the State. It is not very big, because New Mexico hasn't got much population; that is, not very big in absolute terms, but big in New Mexico terms. They had a great difficulty last year. It did not meet the criteria of the existing legislation; it produced some real difficulties in handling that in a reasonable manner from the standpoint of the State banking structure, because nobody else was able to take over the holding company within the State. It was precisely this kind of situation. In the end it was broken up and disposed of with some difficulty in-State. But that was a very marginal case where it proved possible in the end, but it was done only with great difficulty and a good deal of uncertainty in the process.

That is the kind of situation that we did have last year where this bill might have been applicable.

Ms. **Oakar**. He said that the industry as a whole had demonstrated a remarkable ability to withstand financial pressures. It was upbeat testimony, as I recall, and that is why your coming in with this kind of legislation frankly seems almost the antithesis of what he said representing the Fed.

Mr. **Volcker**. I think you have to make a distinction here, if I may interrupt for a moment, between what I would see as a generally improving picture nationwide and the difficulties that are peculiar both through a combination of very difficult economic circumstances and a peculiar State structure of banking in some States.

Ms. **Oakar**. I think you try to deal with the State issue fairly well in your statement.

Let me quote from something our chairman said that I happen to agree with. In a recent statement, he said,

> If the Federal Government is to take an even bigger role in bank assistance programs, it is incumbent on the Congress to make certain that benefits, at least some of them, flow to consumers, the customers of these institutions.

He went on to say,

> It may well be one thing to structure a program that saves the stockholders, the management and the big depositor and quite another thing to develop assistance which aids the farmer, the energy user and the consumer. Perhaps we should make certain that any banks aided under these programs are truly institutions that serve the public that will foot the ultimate bill.

How would this bill really benefit the consumers, all the farmers that are having problems, and the smaller institutions that are going under because of the crisis in the farm situation? How does this save them as opposed to the upper crust, you might say?

Mr. **Volcker**. First, you used the expression helping those who foot the ultimate bill. The whole thrust of this bill is to eliminate, in the first instance, and certainly minimize, any cost to the FDIC. It is designed to avoid those kinds of costs. It certainly is in the interest of the consumer, the small businessman, whatever, maybe most explicitly those people that don't have easy access to banks other than their local banks, or banks within a particular State or region. By providing further assurance of maintaining the stability of the banking system in those areas and providing further assurance that the banking system in those areas will remain highly competitive, if anything, the competition in those areas would be enhanced rather than reduced.

I would put the emphasis on the fact that it is in nobody's interest, particularly those groups that you refer to, to have questions about the stability of their local banking system. A big corporation may be able to go elsehwere, and probably will, but those consumers and the businessman in those agricultural towns that may be served by a unit of a failing holding company have, it seems to me, a very direct interest in the kind of solutions that this bill would provide if the necessity arises.

Ms. **Oakar**. My time has expired. Thank you.

Chairman **St Germain**. Mr. Bereuter.

Mr. **Bereuter**. Thank you for your testimony. I was particularly heartened by your response to Mr. Barnard, when you indicated that you are certainly willing to look at and perhaps endorse amendments to the bill which might help agricultural banks.

I think the actions taken by the regulators recently was very favorable. Perhaps cynically, I wonder if they would have been taken if we had not had proposals for statutory change emerging on all sides of the Congress. I think it was belated. I think it created additional pain and suffering and dislocation that need not have happened and should not have happened in our part of the country.

There is an example cited by Mr. Leach of the Hawkeye Bank, but generally I look at this legislation—perhaps I am misinformed, I will listen to my banking interests in my State—as having agricultural banks used as a justification or cover for these changes in emergency acquisition power. I really don't see much benefit for most agricultural banks. I think it is a benefit to oil State banks and to oil States primarily.

I would welcome a reaction on that, but I would like to ask you a specific question.

The CSBS testified that formally classifying a bank as failing and openly seeking bidders would tend to cause earlier outflows of uninsured accounts and would destroy some of the flexibility that now exists in the handling of troubled banks, and that seems to be in direct contradiction to your testimony.

What would you like to say also with respect to the conference's opinion?

Mr. **Volcker**. We have had an example or two of this kind of thing where State law did not promote the interstate aspect, and we worry precisely about that but the mere fact that the bank or banks in question were in active negotiation with a potential buyer seemed to calm the situation.

Let me go back to your initial statement, without commenting on the banking situation in Nebraska. Nebraska has the kind of structure that I think, if it did have a serious banking problem, makes this modification of the existing legislation really necessary.

Mr. **Bereuter**. Yes, it does. But unless I am misinformed at this point, the type of banks that would qualify for assistance are not those that have significant trouble. They are the smaller banks.

Mr. **Volcker**. I am not casting any aspersions on what is going on in Nebraska, but just generically it has got the kind of banking structure that if it did have banking problems the legislation would be very applicable.

Mr. **Bereuter**. But in fact it is not relevant to our State. At least that is the way I am informed. Hawkeye is the exception is the point I am making.

Mr. **Volcker**. There are not going to be many of these instances, thankfully. The issue is, when they arise they are important to deal with.

Mr. **Bereuter**. Perhaps we will give you an opportunity to react to a proposal from Mr. Barnard or myself. We would appreciate your response, if you are willing. You indicated that. I thank you.

Thank you, Mr. Chairman.

[In response to the request of Representative Bereuter, the following information was received from Chairman Volcker:]

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

PAUL A. VOLCKER
CHAIRMAN

May 20, 1986

The Honorable Doug Bereuter
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Bereuter:

At the hearing on Wednesday, May 7, and in your letter of May 8, 1986, you asked us to attempt to identify ways in which H.R. 4701 might be amended to assure that farm banks are included within its emergency provisions.

As I discussed at the hearing, H.R. 4701 attempts to extend the benefits of the current provisions permitting emergency acquisitions interstate by lowering the threshold size from $500 million to $250 million in assets. This $250 million number attempts to strike a balance between the need for flexibility in coping with serious problem situations, including those affecting farm banks, while minimizing any adverse affects on the policy of maintaining the ability of the states to determine local banking structure.

Maximum flexibility would be achieved by a further reduction -- or total elimination -- of the threshold size and thus extend the benefits of H.R. 4701 to a much broader range of troubled farm banks, which, as you know, are generally smaller than the $250 million threshold. However, Congress would have to consider whether this added ability to deal with troubled or failed banks comes at too much of a cost in terms of local control over state structure.

Alternatively, a specific exception from the numeric criterion could be made for farm or energy banks. However, such a definition would be essentially arbitrary, and there is little basis for treating these banks differently from other banks experiencing financial difficulties.

I would emphasize that as it stands, the bill would offer the prospect of substantial assistance in certain agricultural states should conditions deteriorate. Specifically, the larger holding companies within each state, which would include a number of local banks with heavy lending commitments in agriculture, would be eligible for out-of-state acquisition and smaller independent banks, which are often correspondents of the larger holding companies, would benefit from a more stable banking environment.

You also asked me to comment on the proposal by the Independent Bankers Association of America on the scope of coverage of H.R. 4701. As I understand their proposal, it would include, in addition to banks with assets of $500 million or larger as under present law, the four largest banks in a state regardless of their asset size. My overall reaction is that proposal would be more restrictive than the provision of the bill and would not, of course, provide any further benefits to farm banks.

The major objective of the proposed bill is to be able to deal expeditiously and effectively with problem situations that could raise unwarranted concerns about basically sound banks and lead to a contagious and spreading loss of confidence. The potential threat arises primarily in regions heavily dependent on energy or agriculture (or both). Moreover, the shortcomings of existing law are most obvious with respect to states that sharply restrict branching, but have instead permitted a holding company structure with numerous subsidiary banks. In this type of banking structure, the failure of a key bank or banks in the holding company could jeopardize the entire system of banks within the holding company, with a correspondingly high potential for broader community and regional impacts. H.R. 4701 is designed to deal with that problem.

I hope that this letter will assist in your consideration of H.R. 4701, and I would be pleased to provide any further assistance that you may require.

Sincerely,

Paul Volcker

Chairman **St Germain**. Mr. McCollum.

Mr. **McCollum**. Thank you, Mr. Chairman.

Mr. Volcker, I would like to ask a question relative to whether there are any States that have banks under $250 million that are the top banks in those States. Do you know whether that is the case? In other words, are there States out there where we would not be covering them by this legislation, where there are top banks in those States that would not be covered?

Mr. **Volcker**. You make a judgment. It depends upon what you think of as a top bank. We were pretty well satisified that with the $250 million limitation you could take care of virtually all the banks or holding companies that you might have a problem finding an in-State buyer for.

Mr. **McCollum**. In other words, you think that even in a State *x* out there that has no banks inside that State that are as large as $250 million——

Mr. **Volcker**. I don't think there is any State that doesn't have at least a holding company as large as $250 million. There are two States that don't have anything over $500 million; there is no State that doesn't have a bank above $250 million. Some of those are probably holding companies.

Mr. **McCollum**. What is the lowest you have got on that list you are looking at? The largest bank in the State is $400 or $350 million? Can you tell us?

Mr. **Volcker**. I would have to find another table here, and I don't know whether I can find it. I could give you all that for the record.

Mr. **McCollum**. What I would like, if you could give it to us, is a listing of those institutions that fall between the $250 million and the $500 million. I think it would be very helpful if your office could compile that for us.

Mr. **Volcker**. There are a lot of institutions in that category, $440 million, I think, but of course the great bulk of those are irrelevant; they are neither going to fail nor have any difficulty in getting in-State solutions.

Mr. **McCollum**. I understand that. I would just like to see where those institutions are.

[In response to the request of Representative McCollum, the information was submitted for the record by Chairman Volker and may be found at the conclusion of this day's hearing in the appendix.]

Mr. **McCollum**. A question was raised by the Conference of State Bank Supervisors in their testimony yesterday about the possibility that by making the situation in the failed bank area a little bit more open that we might be doing damage to the desirability of failing thrift institutions from the standpoint of being acquired across State lines. Does that concern you?

Mr. **Volcker**. I think at the margin that may be true. We can't solve every problem with a given piece of legislation. I don't think that consideration, which I think is rather marginal, should affect your dealing with this proposal. This is only going to apply to selected instances in selected States, and you have a much more general problem in the savings and loan industry.

Mr. McCollum. I know that in my State the other day Chase Manhattan paid an exorbitant premium to get into the State by buying a failed bank.

Mr. Volcker. You happen to have one of the most attractive States to get into and limited opportunities to get into it.

Mr. McCollum. This is, of course, not directly on point of the last question, but do you think that a "Chase Manhattan" would still pay a premium for a savings and loan or another institution if they could get hold of a commercial bank? Is the desirability of a commercial bank in a failing situation greater for an out-of-State acquisition?

Mr. Volcker. It may or may not be, depending upon the particular situation. But you are talking about a handful of institutions, even potentially, acquired by a handful of banks. So you have diminished that one particular bank's interest in one particular State. But there are a lot of banks and there are a lot of States. I don't think that consideration can be more than a very marginal consideration.

Mr. McCollum. I will be very frank. I don't know how it will play out in the end in my consideration of this legislation. I was very concerned, having sat through the original Garn-St Germain markup and been involved in the discussion, when that Park Bank acquisition came along and you have that enormous premium being paid for that bank. That was an obvious concern of mine when we marked up the bill originally that somebody so desirous of coming into my State would pay this enormous premium, and by the very nature of trying to save money for the insurance fund, that would be the winning bidder.

I know you have got some checks on that in this legislation, but can you tell me anything about this legislation before us today that would reassure me that that would be minimized compared to what happened in that instance?

Mr. Volcker. When the transaction is assisted, the arrangements in this proposed legislation are very similar or the same as to that transaction. Where it is unassisted, the safeguards are substantially stronger.

Mr. McCollum. Thank you, Mr. Chairman. I yield back.

Chairman St Germain. Mr. Wortley.

Mr. Wortley. Thank you, Mr. Chairman.

Thank you, Chairman Volcker, for coming up today. We appreciate your testimony.

In H.R. 4701 we talk about "in danger of closing." That is defined as not having a reasonable prospect for meeting the demands of depositors or replenishing the capital without Federal assistance.

The bank supervisors have suggested that the potential losses to the FDIC be substituted for that term "financial assistance." The supervisors say that this would in effect make it clear that receipt of assistance from the Federal Reserve through its discount window would not qualify an institution for emergency interstate sale.

I agree that the discount window generally is the proper remedy for a liquidity crisis, but should the bank's reliance on a discount window be totally ignored in determining whether emergency provisions should apply?

Let's look at Continental of Illinois, a case of a solvent bank experiencing a run, a liquidty crisis that became so severe that it brought the bank down.

Mr. VOLCKER. Certainly Federal Reserve assistance through the discount window should not automatically or otherwise trigger this kind of provision. That is part of our normal functioning. We are there to assist banks that may, because of their own problems or because of problems in the area, be subject to liquidity drains. There could be instances in which the bank becomes so reliant upon the Federal Reserve for such a long period of time that that itself casts doubt on its viability.

I read the comments that both the State Bank Supervisors and the Independent Bankers made on that provision, and perhaps it could be reworded a bit to get their basic thrust by saying FDIC assistance or FDIC ultimate risk of loss. I do not think that would change it in substance. It should not have the connotation that Federal Reserve assistance in and of itself triggers a failing bank situation. It clearly does not, although there may be instances where that heavy reliance on the Federal Reserve is so prolonged and so large that, as they say, it does enter into the judgment.

Mr. WORTLEY. Are there any thresholds that trigger rolling over the loans over a specified period of time before you shut the doors?

Mr. VOLCKER. The basic problem would be at some point you might reach the question of whether the bank was solvent and whether the loan was adequately secured, but at that point it raises these other questions of solvency and FDIC assistance as well.

Mr. WORTLEY. Could you enlighten those of us who may be neophytes. How many banks use the window each day and how many of them use it for extended periods of time?

Mr. VOLCKER. The really relevant question is how many use it for extended periods of time. I don't have in mind how many use it for a daily reserve adjustment. Very few banks would use it frequently for a short-term reserve adjustment, but there are a lot of banks around the country that use it upon occasion.

I do not have the list in front of me of the number of banks that are under what we call the extended credit program at the moment. It is more than it used to be, but it is a rather small number. I would think in the range of a dozen or two.

Mr. WORTLEY. Those who are on the extended credit program, would they be using it like every day for 30 days?

Mr. VOLCKER. Typically, if they are on an extended credit program, they might well use it every day for 30 days or longer.

Mr. WORTLEY. But there is no magic number, 30 days or 60 days, and after that you want to take a hard look?

Mr. VOLCKER. Yes. We have procedures for taking a successively harder look, but it certainly doesn't trigger closing the bank. We have a schedule for increasing the discount rate, for instance, as that time period passes. We give them every incentive to try to get out, and we would be consulting with them, you can be sure, if they are in the discount window for an extended period of time.

Mr. WORTLEY. What is the trigger for increasing the discount rate? How many times do you have to be there within what period?

Mr. VOLCKER. We have a three-tier schedule. It goes up a percent and then another percent, normally, with some exceptions where there is a floating rate. It gets rather complicated. I think it is basically 60 days and 90 days when the rate is triggered, but I would have to refresh my memory on the precise time period at present.

Mr. WORTLEY. The Conference of State Bank Supervisors say that the regulators approach boils down to financing the FDIC, which is already paid for by industry, by selling interstate franchises to the rich buyers in States where franchises would not otherwise be available, such as Mr. McCollum referred to a moment ago. Do you have some observations on that?

Mr. VOLCKER. I think that is one important concern, and the FDIC certainly has it very strongly in mind. I think it is a relevant concern. I do not think it is the only concern. The concern is, I would think, more basically how you can most expeditiously and effectively, consistent with minimum cost to the FDIC, maintain the general stability of banking in these areas.

Mr. WORTLEY. Thank you, Mr. Chairman. My time has expired.

Chairman ST GERMAIN. Mr. McKinney.

Mr. MCKINNEY. Thank you, Mr. Chairman. I apologize to my good friend and say that I am sorry. I was at the Rules Committee. I certainly will read his testimony with avid attention.

Chairman ST GERMAIN. Mr. Bartlett.

Mr. BARTLETT. Thank you, Mr. Chairman.

I also want to thank Chairman Volcker for his leadership on this issue and his testimony here today. I also was in the Rules Committee earlier this morning.

It seems to me that both the Congress and the country may be arriving at a consensus that legislation like this may well be necessary in terms of obtaining another option in Garn-St Germain.

My question, and I think your testimony covers it a bit, would be that there is some disagreement as to building that option in and what some of the details might be. I would like to ask you about a few of the details.

The ABA and the State Bank Supervisors have both suggested that State supervisors be given veto authority over emergency interstate acquisitions. I know that your legislation has supported a consulting role and, as I understand it, a 48-hour kind of response.

Mr. VOLCKER. I think it is really stronger than a consulting role, particularly when it is unassisted. It is true that it is not an absolute veto. If a State supervisor says, "Look, we have got a buyer here in-State and that is the one that ought to be approved," we have statutory responsibilities for making sure that any buyer of a bank is in a position, financially and otherwise, to manage that bank and maintain its stability.

So I do not think we can give up that statutory responsibility that inevitably lies in our ball park as supervisor of holding companies, but we would obviously have to make a very strong showing that, indeed, we thought the institution proposed by the State bank supervisor was not up to the job. So the burden of proof would be very much on us in those circumstances. But I don't think that that residual power on our part to say, "No, the State bank supervisor doesn't have a viable candidate," should be removed. With that little difference, he basically has the full option and invitation to present any State bank solution, which would automatically have preference so long as it can meet that test.

Mr. BARTLETT. I want to see if I understand that 48-hour solution or that other buyer.

Mr. VOLCKER. It is not just 48 hours, because he has to be notified before that time if the failing bank is in negotiation or wants to go into negotiation with other buyers. So he has some period of time while that process is proceeding to consider his own options as to what in-State solutions might be available. Then, formally, he has at least 48 hours, the minimum time, to present an objection or an alternative to us.

Mr. BARTLETT. Then theoretically, because the State bank supervisor has notification when negotiations were to begin, he has essentially the same notice as any other party that may be negotiating.

Mr. VOLCKER. That's right.

Mr. BARTLETT. I want to see if I understand the way the State bank supervisor could then present an in-State offer. I am not certain how it would work, but as I recall, it says something like without regard to price to the shareholders. Does that mean that any in-State acquirer could make any offer, say a dollar, that any offer at any price would take precedence over an out-of-State offer?

Mr. VOLCKER. Yes. So far as this law is concerned, so long as that in-State buyer is in itself capable of taking over, recapitalizing, providing liquidity and all the rest to the failing institution, his bid would take precedence. You have the question of whether the holding company would accept it, because this institution by definition has no Federal assistance at this point. So the directors and the stockholders of the holding company would have to be willing to accept that bid, because then you have to look at what their alternatives are. The alternative, if the bank is declared to be failing, is presumably that it would fail if the bid is not accepted. Then you go into the other procedures, or you would get FDIC assistance and go into the other procedures.

Mr. BARTLETT. It sounds to me as if it is a virtual veto.

Mr. VOLCKER. It is very close to it.

Mr. BARTLETT. So long as the State supervisors come up with any buyer at any price.

Mr. VOLCKER. If he comes up with a valid purchaser, it's a veto, but it is our judgment as to whether it is a valid purchaser.

Mr. BARTLETT. The primary regulator would have to make the judgment.

Mr. VOLCKER. In that case it is the Federal Reserve as the supervisor of the holding company that is buying it.

Mr. BARTLETT. One last question. One of the other proposals that I have seen would say that we would accept the regulators proposal with regard to further expansion of out-of-State banks making further acquisitions with the three metropolitan areas but put a 3-year moratorium on that to give banks that are in a State with some weakened condition of financial institutions a chance basically to catch up. Would that, in your judgment, provide sufficient incentive for the out-of-State acquisitions?

Mr. **Volcker**. I am sure there are other ways of doing it, and you just want to compare various alternative methods against precisely the problem that you mentioned. If you make it so unattractive to an out-of-State bidder, in practice you will have accomplished nothing. So you have got to balance the necessity of having a viable organization in the eyes of the out-of-State bidder against whatever limitations you put on it, which could take various forms.

We have thought that this is a practical way to go about it on the theory that the three largest metropolitan areas in the State would presumably already have a lot of competition, a lot of different banks, and that would present the least threat to the banking structure of the state as a whole consistent with making it attractive, and that is the balancing.

Mr. **Bartlett**. Thank you, Chairman Volcker.

Chairman **St Germain**. Let's get that clear. On the three metropolitan area provision, would the legislation sunset after 3 or 5 years, or is there a sunset on that already?

Mr. **Volcker**. No; they could keep whatever they have.

Chairman **St Germain**. They would keep three metropolitan areas. Now the sunset has arrived, whether it be 3 or 5 years. Does that provision then self-destruct as well so that the acquiring bank that is now in the three metropolitan areas can now go into other areas of the State?

Mr. **Volcker**. No; that would be governed by State law, as I understand the way it is written.

Chairman **St Germain**. As to regional compacts within the region, would the acquiring institution then be able to expand within the compact?

Mr. **Volcker**. If the acquiring institution is within that regional area, it would be entitled to all the rights and privileges that any bank within that regional area had. So if a bank had a regional compact of the ordinary sort and banks in the region could expand anywhere, an out-of-State institution acquiring one of these banks could expand anywhere. He would be within the region; he would just come under the normal State law.

Chairman **St Germain**. Mr. Wylie.

Mr. **Wylie**. Thank you, Mr. Chairman.

Chairman Volcker, I am sorry. I had to leave for a while, too, to go to the Rules Committee, and if these questions have been asked, you can just say read the record.

You state in your testimony that the authority to arrange a sale of the entire holding company is the most needed new authority in H.R. 4701. The Conference of State Bank Supervisors testified against that yesterday and said that if the sale of the entire holding company becomes the rule it will create a strong bias toward interstate sale by forcing bids on larger, more expensive packages and thus reduce the number of potential in-State bidders.

Would that be a likely or even a probable result?

Mr. **Volcker**. This bill does not compel the holding company to be taken as a unit; it could be broken up into several packages or not dealt with as a holding company at all.

But, yes, I do think, given the banking structure in some of these impacted States, this could be the most important provision. This is the limitation that we had in New Mexico, for instance, where you had a holding company that exceeded all the threshold sizes but the individual units did not. You could not deal with the holding company as a whole, and it left you in a bit of a mess, which was successfully surmounted, but only rather narrowly in that particular instance.

If you are going to have a viable package for an out-of-State bidder, you may want the whole holding company.

Beyond that, I think you will find a number of these cases where there undoubtedly would be elements that in kind of a snapshot looked all right when they were part of a holding company. But would they be all right if they are suddenly shorn of their parent and their sister institutions? I think in a number of cases you would reach the judgment that you would be left with a succession of shakey circumstances. So, from both directions, both looking at the attractiveness of the purchase and looking at the viability of what is left, you may want to deal with the holding company as a whole or large portions of it.

Mr. **Wylie**. I don't necessarily disagree with that and I think you may have a valid point. I guess what he wants is some assurance that each case would be dealt with on a case-by-case basis and would not become the rule. Is there any way that we can give that kind of assurance?

Mr. **Volcker**. I think each one of these would certainly be dealt with on a case-by-case basis. There is nothing to prevent, of course—and maybe it is appropriate in some instances—a troubled holding company from selling off some of its profitable banks if it can find a buyer just on its own initiative within the State or within the region.

Mr. **Wylie**. Mr. Angermueller will be a member of the next panel, and in his statement today he says "I would respectfully suggest that this committee communicate to the Federal Reserve Board its encouragement to the Board to relax or eliminate existing and prospective tandem restrictions in connection with emergency thrift acquisitions," and I am communicating with the Board. I don't know how he could get better service than that.

I assume that he is talking about some restrictions that the Federal Reserve placed on Citicorp when they acquired some failing thrifts in California, Florida, and Illinois. As I recall, those restrictions said that Citicorp had to keep them and maintain them as thrifts. The same restrictions didn't apply in Ohio, of course, but again I suppose we are talking about a case by case determination. Chase Manhattan came in and bought six State chartered S&L's and they were allowed to convert them to State chartered banks and be insured by the FDIC.

Mr. **Volcker**. In Ohio I think State law permitted that.

Mr. **Wylie**. In this case these were all federally chartered thrifts, I would assume.

Mr. **Volcker**. That is correct, and we do have tandem restrictions that were placed on those acquisitions in furtherance of what was considered to be appropriate public policy at that time, precisely the issue that arises here of adequately protecting States rights. There was very considerable congressional interest in that, both from the standpoint of protecting States rights and from the standpoint of mixing thrifts with banks.

The conclusion that was reached was that it was appropriate to put on such tandem restrictions, and of course Citicorp was fully informed of those restrictions before they purchased the institutions and were fully knowledgeable of them.

Mr. WYLIE. Mr. Angermueller, your statement has been communicated and you will have a chance to respond.

Thank you very much, Chairman Volcker.

Thank you, Mr. Chairman.

Chairman ST GERMAIN. Mr. Barnard.

Mr. BARNARD. Mr. Chairman, I would like to get the Chairman to elaborate just a little bit on one aspect which we have been discussing here lately. I know we are leaning over backward to provide States rights in these acquisitions, but aren't we somewhat leaning over backward in limiting this operation to three of the largest metropolitan areas? Aren't we minimizing the effectiveness of this bill by doing that?

Mr. VOLCKER. Maybe. It's a matter of judgment. Certainly from the standpoint of attracting out-of-State acquirers in situations where the holding company being acquired is not in very good shape by definition, it detracts from the value, and this is a pure judgment as to what point you draw the line. We felt that three metropolitan areas gave them at least a fairly good go, but there is nothing written in stone about three being precisely the right way to go about it.

Mr. BARNARD. We would be using the capacities of an out-of-State organization to save an in-State organization, but we would be making them second-class citizens.

Mr. VOLCKER. To some extent, yes.

In some of these holding companies—and maybe that is the more likely case—the holding company itself that is acquired will be in more locations than three metropolitan areas, so they will have a larger franchise than that.

Mr. BARNARD. So they wouldn't have to disenfranchise themselves?

Mr. VOLCKER. No. It just says if they are not already there they can go there.

Take Texas last year. The Midland Bank, which was not in good condition, was bought eventually by an in-State bank. That could have been a potential candidate under existing law for an out-of-State acquisition, but it was solely in Midland, TX, and the amount of interest that would have been generated among out-of-State banks was in fact decidedly limited if it was limited to a location in Midland, not one of the leading metropolitan centers of Texas. If that situation arose again and you had to go to an interstate solution, it says that a bank acquiring a bank in Midland, TX, could also go into Dallas, Houston and San Antonio.

Mr. BARNARD. Does that mean that they could buy banks in those areas under the holding company umbrella or they could organize banks in those areas under the holding company umbrella?

Mr. VOLCKER. Either way.

Mr. BARNARD. Let's take a branching State. I think they have statewide branch banking in California. Let's say that you effect the bill in California. So that means where they have statewide branch banking and a bank is acquired, they could not operate under the State law?

Mr. **Volcker**. Yes. I think it is unlikely this situation would arise in California for the reasons I mentioned, but I think that is the thrust. They could go into San Francisco, Los Angeles and San Diego

Mr. **Barnard**. But not Sacramento?

Mr. **Volcker**. But not Sacramento, the way this is written.Wait a minute. I am told they could branch all over the State. I guess we make a distinction between branches and holding companies.

Mr. **Barnard**. That's good. I just wanted to be sure.

Mr. **Volcker**. I don't know why, but apparently we made a distinction between branching and holding companies.

Mr. **Barnard**. Thank you, Mr. Chairman

Chairman **St Germain**. I yield to Mr. Carper for one brief question.

Mr. **Carper**. Thank you, Mr. Chairman.

Mr. Volcker, welcome.

There has been some discussion at a previous hearing on this bill about applying the concentration limitations similar to those that are in H.R. 2707. What effect might those limitations have, that is, that the top 25 banks cannot acquire one another, no acquisition by banks with more than 1 percent of deposits? What impact might incorporation of that provision have on this bill and how would you respond to a proposal to do so?

Mr. **Volcker**. I would raise one general question as to whether that kind of structural policy, whatever its merits one way or the other, ought to be attached as a limitation to this specific kind of emergency legislation as a matter of principle.

As a matter of practice, I don't know what 1 percent would do, if that is the number you pick out. I do not think you want to eliminate all the largest banks in the country or largest holding companies in the country from participating. You might not have any buyers. As a matter of concept, if you ever had to get into a larger institution, it takes a large institution to buy a large institution.

Mr. **Carper**. Thank you, Mr. Volcker.

Thank you, Mr. Chairman

Chairman **St Germain**. Chairman Volcker, I am going to ask for an expansion from you and your staff in writing for the record in the near future. I'm sure no one who wants the bill would like it, to hold up the bill. And that is on the question of whether or not the limitation of three metropolitan areas would indeed continue to be in effect beyond the life of the bill if the bill is sunset at 3 or 5 years.

Mr. **Volcker**. I will give you an absolute definitive answer.

Chairman **St Germain**. There is a different opinion among staffs of the various members.

Mr. **Volcker**. My understanding is that the intent was that it would continue to apply, but if there is a difference of opinion or muddiness in language, we certainly have to clear it up.

Chairman **St Germain**. That would be very important.

If there are no more questions, we can have our next panel.

Mr. **Vento**. Mr. Chairman, I just wanted to comment on the concentration question. The issue of concentration is not irrelevant in terms of this entire consideration, is it, Mr. Volcker?

Mr. **Volcker**. I suppose in some sense you could argue it is not irrelevant, but I really think you ought to address that issue as part of a more conceptual look at the whole statewide problem. There are not going to be enough of these to greatly distort the banking system in the United States. I cannot imagine that happening, having any significant distortion on the aggregate structure, size, concentration of the American banking system.

We proposed a somewhat different concentration test, but we did propose a concentration test as part of a coherent look at interstate banking generally.

Mr. **Vento**. Mr. Chairman, I understand there is consideration about that. I would just point out that that concentration amendment exempted powers under the existing emergency. Certainly that was a consideration in that particular amendment which Mr. Leach and myself offered and added to the bill.

Your answer to Mr. Carper's question raises new concerns when you are talking about the merger of some of the largest institutions, which I had not really anticipated that this was aimed at.

Mr. **Volcker**. This legislation is not aimed at it.

Mr. **Vento**. I think, Mr. Chairman, that that points out the necessity of having something of that particular nature, because if we are going to have a Continental Illinois merging with a Citibank or Chemical Bank, then I think that it is whole new ball game in terms of what we are talking about. If the chairman hadn't raised that particular response, I guess I would have rested a little easier with his answer, but since he did, I think it just further points out why we might want to be looking at this issue of concentration through whatever method.

Mr. **Volcker**. I think the *Continental Bank* case is obviously a case in point. If a merger were going to be arranged for that, and that was an option at the time which was rejected for a variety of reasons, you could not have expected to merge Continental into a small bank.

Chairman **St Germain**. As a matter of fact, the big banks that looked at it didn't want any part of it.

Mr. **Volcker**. I think that is one of the practical problems.

Mr. **Vento**. I think one of the problems, Mr. Chairman, with the whole concept with this merger thing is that sometimes you don't eliminate problems; you just keep swelling up bad loans and you end up with bigger problems.

Chairman **St Germain**. Chairman Volcker, let me say this to you. With all due respect, I appreciate your having reassured the committee on many instances that this would be a very limited effect, but when one has sat on this committee over a period of years and gone through the amendatory process and been reassured of the limited application of certain sections—you know, we wouldn't have H.R. 20 in the Rules Committee and the necessity for action if some of our predecessors hadn't swallowed hook, line, and sinker the allegation and the affirmation that a particular amendment was merely for one institution and would never ever be applied anyplace else. So we do look upon those assurances with great trepidation.

Mr. **Volcker**. I am sensitive to your concerns. You ought to be looking at them from that point of view. I do think this is limited compared to what is going on in interstate banking generally. I might point out that there has been quite a lot of time to repair that omission.

Chairman **St Germain**. This might be the time right now. You have said to some of the other questioners that this should go through as the Virgin Mary, this piece of legislation. Well, you know, maybe we would like to have St. Joseph go along too in the form of H.R. 20, some of us. You wouldn't object to H.R. 20 going along with this, would you?

Mr. **Volcker**. I support the concept of H.R. 20, as you know. I would like to see this bill go through clean and I would like you to deal with that nonbank bank issue, and I would like to deal more comprehensively than that, and that is my wish list.

Mr. **Barnard**. Mr. Chairman.

Chairman **St Germain**. Yes.

Mr. **Barnard**. Wasn't the definition of a bank done since you have been here?

Chairman **St Germain**. Not while I was in a conference.

Mr. **Barnard**. It was done since 1961.

Chairman **St Germain**. Yes, but I was not a conferee at the time. I was way down there.

Mr. **Barnard**. I didn't you were ever way down there. [Laughter.]

Mr. **Volcker**. I would, in any event, like to defend the chairman. I don't think anybody conceived at the time of that little old redefinition, the nonbank banks, that it would be used in the way that it is being used currently. You cannot foresee every one of these things, but you can repair them.

Chairman **St Germain**. Chairman Volcker, may I say on behalf of the subcommittee that we appreciate your appearance. Once again you have proven to be stimulating, somewhat revealing, but as canny as ever. We thank you kindly.

We will submit additional questions in writing for the record.

[The following letter was received from Chairman Volcker containing responses to written questions submitted by Chairman St Germain:]

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

PAUL A. VOLCKER
CHAIRMAN

May 20, 1986

The Honorable Fernand J. St Germain
Chairman
Subcommittee on Financial Institutions
Supervision, Regulation, and Insurance
Committee on Banking, Finance, and
Urban Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman St Germain:

Your letter of May 12, 1986 requests answers to a number of questions on issues raised during my testimony on May 7, 1986 on H.R. 4701, the Financial Institutions Emergency Acquisition Amendments of 1986. Some of the matters referred to in your letter were posed as specific questions during the hearing, and in order to complete the record as quickly as possible, I took the initiative of providing answers to them in my letter to you of May 12. That letter covers the issues referred to in question 2 (a), (b), and (c) concerning the expansion rights of out-of-state acquirors and the first part of question 3 concerning shareholders' rights in banks that are "in danger of closing." For your convenience, I am enclosing a copy of my letter of May 12.

Acquisitions by Nondepositories

Your first question requests an explanation in the different answers given by myself, Chairman Seidman and Comptroller Clarke to the question on whether it is possible for a nonfinancial institution to avail itself of any of the provisions of H.R. 4701 in order to acquire an insured bank. In my answer, I emphasized the fact that the only impact of H.R. 4701 on this question is that it lifts the Douglas Amendment restrictions on interstate acquisitions in certain circumstances. Since the Douglas Amendment limitations on interstate acquisitions are only applicable to bank holding companies, H.R. 4701 does not in any way permit or allow nonfinancial institutions to acquire insured banks.

The replies of my colleagues answer a different question and they are consistent with my reply as to the effect of H.R. 4701. All agree that H.R. 4701 does not in any way assist a nondepository institution in acquiring an insured bank. My colleagues point out that H.R. 4701 does nothing to change existing law which does not prevent a nondepository institution from acquiring an insured bank. Such an insured bank would, however, under existing law, have to be operated as a nonbank bank.

In that connection, the commercial advantage or feasibility of converting the commercial banks that would be covered by H.R. 4701 into nonbank banks by either divesting commercial loans or demand deposits without compromising the commercial viability of the bank may be questionable. Even more questionable, in fact a demonstration of the reductio ad absurdum of the nonbank bank concept, would be the transfer of the acquired bank's commercial loan portfolios to a commercial lending affiliate of the nonbank buyer. It is for this kind of reason that I stressed in response to your question during my testimony my long-held and firm view that the Congress should take prompt action to close the nonbank bank loophole.

Shareholder Benefits

The second part of your third question asks whether shareholders of a bank in danger of closing should be allowed to profit from an interstate transaction. As I stressed in my testimony, we have tried to strike an appropriate balance between the need to deal effectively with urgent banking problems in order to avoid disruption of services and potential ripple effects elsewhere and the desirability of maintaining the policy of state determination of local banking structure.

In striking this balance, in the case of unassisted transactions we have put great emphasis on an in-state solution, requiring that the bank in danger of closing explore an in-state acquisition before going out-of-state, and that the state supervisor be immediately informed of the initiation of negotiations with an out-of-state buyer. Moreover, we have provided that state supervisors have the effective ability to veto an out-of-state acquisition so long as there is any in-state buyer prepared to, and capable of, capitalizing and managing the bank in danger of closing. The only basis for reversing the state supervisor's decision is a finding by the Board that the in-state potential buyer is not capable of meeting these minimum requirements.

Thus, an out-of-state solution may go forward only where there is no feasible in-state solution. With these very substantial safeguards, it would not seem unreasonable to permit an out-of-state acquisition in those limited circumstances where this authority may be used. In cases where FDIC assistance has been provided a failing bank, I would expect any so-called premium arising out of the franchise value to an out-of-state buyer would be used first to protect against any potential loss to the FDIC, and only if there were any surplus, or in a case where FDIC assistance would not be required, would the shareholders benefit. Thus, the shareholders would benefit only in an unusual case and only after careful safeguards, to protect the public interest, have been invoked.

More Stringent Local Service Requirements

Your fourth question, posed by Congressman Charles Schumer, concerns the possible application of a more stringent public benefits test for meeting local service requirements. His question seems to be premised on his assumption that the emergency acquisition provisions of H.R. 4701 "could be the linchpin of a tremendous expansion of interstate banking."

I do not foresee widespread use of the interstate acquisition provisions of this bill. They are an essential backstop for dealing with potentially serious problem situations, and a way of preventing the spread of these problems within a community or region. Thus, the bill will be useful in helping to create an atmosphere of confidence, even if the interstate provisions are used little, if at all.

If an interstate acquisition does take place, it will be essentially because that approach proved to be necessary to meet the convenience and needs of the community and the state. I do not believe that the goals of the bill would be furthered by placing a new and more stringent requirement with respect to local services in an emergency situation. So far as subsequent acquisitions are concerned, provisions of present law already require the Board to assess the buyer's record of meeting the credit needs of its entire community, including low and moderate income neighborhoods. The Board would, of course, take these factors into account in considering any application arising as a result of H.R. 4701. Any revision of these standards or changes in the circumstances of application should come only in the context of a careful and separate evaluation of the need for them.

I would be pleased to provide any further assistance the Subcommittee may need in its consideration of H.R. 4701.

Sincerely,

Paul A Volcker

Enclosure

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

PAUL A. VOLCKER
CHAIRMAN

May 12, 1986

The Honorable Fernand J. St Germain
Chairman
Subcommittee on Financial Institutions
Supervision, Regulation, and Insurance
Committee on Banking, Finance, and
Urban Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman St Germain:

This is in response to questions raised at the hearing on H.R. 4701 concerning the scope of in-state expansion rights allowed an out-of-state acquiror as well as the rights of dissenting shareholders.

First, a question was raised whether, if the state in which an acquired bank is located had enacted regional interstate banking legislation, the out-of-state bank holding company could acquire banks in other states in the region. If the acquiring bank holding company is within the region then the proposed bill would not limit subsequent expansion. If, on the other hand, the out-of-state bank holding company is located in a state that is not within the region, and it acquires a bank in a state that is in a regional compact, the out-of-state holding company could acquire additional banks in any states in the region, but only if such additional regional acquisitions were permitted by the other states participating in the regional arrangement. However, most regional arrangements have provisions preventing such so-called "leap frogging."

In this connection I would also like to note, in response to a question posed by Congressman Barnard, that the bill does not affect in any way the provisions of existing law that recognize that a failed bank acquired by an out-of-state banking organization may branch within the state to the same extent as national banks in the state. Following this precedent, a bank "in danger of closing" that is acquired by an out-of-state organization under H.R. 4701 could continue to branch to the same extent as any national bank in the state, as under current law.

You also asked, Mr. Chairman, whether the authorization for additional bank acquisitions in the three largest metropolitan areas in a state would terminate when the provisions of the bill terminate under its sunset provisions. The bill, as currently drafted, merely extends the expiration date of the authorities contained in the bill from July 15, 1986 to April 15, 1991. Once the bill expires, authorization for additional acquisitions would consequently expire and an out-of-state holding company that had previously made an acquisition would thereafter be prohibited from acquiring additional banks in the three largest metropolitan areas, or anywhere else in the state, unless, of course, the state had enacted legislation in the meantime authorizing additional acquisitions.

The sunset provisions should be amended to make it clear that this limited three cities-metropolitan area expansion provision of the Act should not be subject to the sunset provision. It would seem fair and reasonable to provide instead that an out-of-state holding company that acquires a failed or failing bank should be permitted to continue to have the authority to acquire banks in the three largest metropolitan areas, but only in those areas, even after the other provisions of the bill terminate.

Finally, toward the conclusion of the hearing you asked about the rights of shareholders in a transaction authorized under the bill. As I indicated, under H.R. 4701 no acquisition of a bank in danger of closing may be permitted without the specific approval of the bank's board of directors. In addition, under state corporate law which governs these matters, the approval of shareholders would generally be required for a merger or sale of the banking assets of a bank holding company. Under state law, dissenting shareholders may also have certain appraisal rights with respect to their holdings.

You specifically asked about shareholders' rights to prevent a sale. In this case final action would, in almost all cases, be taken by the Board, which action would be subject to judicial review by an aggrieved person, including an aggrieved shareholder. The test that the court would be required to apply is whether the Board's findings of fact are supported by substantial evidence. I am advised that shareholders may also bring a derivative action to prevent the sale, but, in accordance with generally applicable principles of corporate democracy, where the majority has acted reasonably and in good faith in the best interest of the corporation, it is unlikely the transaction could be enjoined or set aside by the courts.

I would be pleased to provide any further assistance the Subcommittee may need in its consideration of H.R. 4701.

Sincerely,

Paul A Volcker

Chairman St Germain. We now will hear from our panel.

At this time, gentleman, we are going to put your entire statements in the record. We will ask you to proceed in your own manner, and at the end of the three presentations we will go to the question and answer period.

We will follow the order as on the subcommittee notice.

Mr. Petty, we want to welcome you and we will hear from you first.

STATEMENT OF JOHN R. PETTY, CHAIRMAN, MARINE MIDLAND BANKS

Mr. Petty. Thank you, Mr. Chairman. I welcome the opportunity to appear today, and I am speaking as chairman of Marine Midland Banks.

It is very significant that the Federal Reserve and the FDIC and Comptroller have joined together in seeking immediate congressional approval for the provisions in H.R. 4701 to assist in managing selected problems within our industry. Chairman Volcker emphasizes just now the precuationary nature of this legislation. Such unanimity demands that those proposals be given serious and favorable consideration.

Furthermore, I cannot disagree with the regulators' assessment of the difficulties facing some financial institutions in some States. It is evident that some institutions deeply involved with agriculture, energy loans and real estate are experiencing increasing difficulty with their liquidity.

A bank loans to the environment it serves, particularly through its direct offices. If that area is concentrated in farming, energy and real estate, so is the bank's portfolio. Laws which restrict a bank's direct operations foster loan concentrations. This has led to problems.

In the current situation particularly, many troubled banks would simply be better off if they were less geographically restricted, leading to a more diversified, stronger loan portfolio and a far broader deposit base. Experience again demonstrates a broad deposit base and diversified loan portfolio strengthens an institution immeasurably, making it better able to adjust to changing conditions.

Five years ago this committee considered the original regulators' bill and encountered concerns about the McFadden Act, the Douglas amendment, and the Nation's dual banking system. Fears were expressed then that the legislation was tilted toward money center institutions. Such fears have now been reiterated. Our experience over the last 5 years, however, has shown that such concerns and fears were and are unfounded.

The emergency acquisition authority has done little to affect the Nation's interstate banking statutes. The question is, rather, has it done enough to address the broader national interest in a safe and sound financial system?

The regulators have exercised caution in applying the title I existing emergency provisions to savings and loan association acquisitions and in applying similar provisions for the mutual savings banks.

Indeed, I think it is fair to characterize the changes proposed in H.R. 4701 as only modest, but necessary. One can easily see where the agencies might have gone much further in their proposals. As an example, the provision that an acquiring out-of-State bank does not have the same ability to branch and expand to the same extent as in-State banks. Why should any new investor want to be restricted to the same or even smaller market that got his predecessor in trouble?

Clearly, the proposed bill does not establish any new policy on interstate banking. That is driven by other dynamics.

Over 30 States in the Union have already, to one extent or another, recognized the public benefits served by broader national banking. That is not the subject of my testimony or this legislation.

Of vital concern to this subcommittee is the need to help find the means to attract private capital to those institutions in need. That can only be accomplished by making such investments attractive to investors who have other opportunities in the marketplace.

H.R. 4701 makes a move in that direction, but it is not a giant step. Hopefully the bill potentially would diminish the risk to the insurance funds by attracting new capital and avoiding intervention by the regulators.

The proposal is helpful, I suppose, but I am not convinced the changes will create significant additional flows of capital in view of all the caveats.

Limiting the market to which shareholders can sell or the way they can sell may serve someone's purpose, but it also limits the possible buyers and the benefits to the public at large.

Changes are needed to broaden the benefits of the bill. For example, the agencies could have proposed the complete elimination of the size threshold requirement for bank acquisitions. Instead, they proposed only a 50-percent reduction in the requirement.

They could have proposed the elimination or relaxation of the bidding procedures which favor local bidders. Instead, they maintain the complicated priority scheme contained in existing law, a priority scheme which during the Ohio thrift crisis worked against a more timely solution, continuing uncertainty in the marketplace, and distress to individual depositors.

Finally, and quite significantly, they could have proposed that once a bank holding company acquired another institution in a State that bank holding company would be able to operate as any other bank holding company. Instead, they limit the institution to only the three largest metropolitan areas in that State. This tends to create, however, a type of second-class banking citizen, depriving the pubic of the advantage which a broad and efficient consumer and small business driven bank with a full range of efficient services could bring to a new market. That is hardly an advantage to the community that finds itself with a failing local financial institution.

Therefore, the agencies in establishing a unified position, may have erred on the side of the lowest common denominator in fashioning their bill. Relatively few banks have taken advantage of the emergency acquisition authority contained in existing law because that law is so constraining, and few will in the future as well if this bill is passed.

As I have pointed out, there is the opportunity to make this a more useful piece of legislation where enhanced powers and regulatory discretion can better serve the national interest.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Petty maybe found at the conclusion of the hearing in the appendix.]

Chairman St Germain. Thank you, Mr. Petty.

Now we will hear from and welcome Mr. Angermueller. Your statement is in the record. You may proceed.

STATEMENT OF HANS H. ANGERMUELLER, VICE CHAIRMAN, CITICORP, NA

Mr. Angermueller. Thank you, Mr. Chairman.

I am vice chairman of Citicorp and Citibank, Citicorp's principal banking subsidiary. I appreciate this opportunity to comment upon the Financial Institutions Emergency Acquisition Amendments of 1986 as have been proposed by the Federal regulatory agencies. For convenience, in my statement I shall refer to the proposed legislation as the regulators' bill.

In order that the subcommittee may understand the reason for my later comments on the regulators' bill, I think it might be helpful to make a few brief and general comments on the rapidly changing environment in the financial services business.

Over the years a variety of laws, rules, and regulations have taken effect that severely contrain where U.S. banks can do business and how those banks can do business. These laws, of course, include the McFadden Act, the Douglas amendment, the Bank Holding Company Act, and the Glass-Steagall Act. These were, for the most part, enacted over half a century ago when the financial services markets were far different than today's.

During the last 20 years or so a number of fundamental and essentially uncontrollable forces have changed the nature of the banking business and the other traditional financial businesses also.

In my opinion, the most important of these forces are:

First, technology that has, for the most part, eliminated traditional impediments in the form of volume, distance, time and cost in the processing, storage and transmission of financial data and information.

Second, savings that are not flowing into banks and are managed by institutions other than banks and thrifts in ever larger quantities. Today institutional money managers in the United States manage over $2 trillion of pooled investments, a sum just about equal to the total assets of all U.S. commercial banks.

Third, the attitudes of traditional bank customers, both individuals and institutions, that are changing. These customers are now willing to deal with institutions other than banks and thrifts in the management of their financial affairs.

Fourth, the new competitors to banks and thrifts that are appearing. They offer a wide variety of complementary and efficient financial services to this new breed of customers, both institutional and individual, at a variety of locations and using the latest technology.

Fifth, finally, the capital markets of the world that are becoming national and indeed international in nature so that savings generated in one market are increasingly being made available for investment in other markets.

These forces are crashing into the traditional barriers that segment the U.S. financial services industry. Banks, thrifts, securities firms, insurance companies, finance companies, commercial enterprises, and consumers are all rethinking their traditional ways of doing their financial business.

The regulators' bill addresses a specific short-term aspect of this larger picture; namely, what can the private sector do about some of the banks and thrifts that have encountered financial difficulties in this changing environment?

If the goal is to reduce the public sector costs by increasing the demand from private sector acquirers for the charters of troubled banks and thrifts, then I do not believe the regulators' bill in its present form will accomplish that objective. It creates no incentives, and instead imposes too many impediments to really increase demand for the charters of failed banks and thrifts.

Let me elaborate.

Before the Garn-St Germain Act was passed, Federal thrift industry regulators had essentially full authority to determine who could acquire a failing thrift institution and under what terms. The act, however, restricted that authority and created a variety of constraints if a failing thrift was to be acquired by an out-of-State bank or bank holding company.

Nevertheless, as a number of large thrifts located outside New York began to encounter financial difficulties, Citicorp saw an opportunity to enter new markets despite existing interstate banking restrictions. According, Citicorp, in 1982 and 1984, acquired failing thrifts in California, Florida, and Illinois despite the constraints of the Garn-St Germain Act and despite certain nonstatutory constraints, the so-called tandem restrictions, which were imposed by the Federal Reserve Board as a matter of policy.

While we were delighted to enter into and serve these new markets, I must confess that we perhaps underestimated the difficulties of making the acquired failing institutions profitable in the face of the legal and regulatory constraints that were imposed upon us. Today we would probably be more cautious in bidding for such institutions.

Moreover, since the original concepts of the Garn-St Germain Act were introduced in 1981, several developments have occurred. Many individual States have relaxed their interstate banking barriers and many others are considering doing the same. These relaxations are taking a variety of forms. Some are regional in character; some are regional with a national trigger; some are national to start with; some grant full powers and others grant limited powers. All these relaxations, however, seem to be motivated by the ideas that more flexibility will help the banking industry and more competition will better serve the public.

As this State-motivated breaking down of interstate barriers is continuing, more and more opportunties are devloping for banks or bank holding companies situated in one State to establish or acquire financially healthy banks or bank holding companies in other

States. In other words, the interstate market for healthy banks is moving from a seller's market to a buyer's market. Banks in States with regional compacts still have healthy targets within those regions and may well be reluctant to bid for failed institutions outside of those regions. Even the New York banks, which have been severely discriminated against by the regional compacts, have interesting opportunities outside New York.

In this context, the regulators' bill, to be effective, must be changed to eliminate those provisions which would deter an out-of-State bank or bank holding company from bidding to acquire a troubled bank that is in danger of closing.

Specifically, I would suggest that the bill be amended to permit a successful out-of-State bank holding company bidder to expand within the State and region to the same extent that an in-State bank holding company could.

Chairman **St Germain**. Excuse me. Mr. Angermueller, you heard Mr. Volcker state that this act does not restrict expansion within the regional compact.

Mr. **Angermueller**. I respectfully feel that the chairman may not take full account of the fact that it is possible that in the State legislation in the other States there might be a provision to prevent a new entrant from using the region's cross border permission.

Chairman **St Germain**. Therefore, he was correct as far as H.R. 4701 is concerned, but your apprenhension and fear is that the States might take action.

Mr. **Angermueller**. That is right, and H.R. 4701 does not deal with that issue.

The bill might also be amended by permitting nonbinding discussions with potential out-of-State bank holding company bidders in unassisted acquisitions but requiring prior notification to State regulators before entering into binding commitments.

Indeed, in light of the changes that are occurring in the financial services industry generally and in the area of interstate banking in particular, I would respectfully suggest that this subcommittee might also consider eliminating or simplifying the existing emergency thrift and bank acquisition provisions of the Garn-St Germain Act which deal with multilevel bidding procedure priorities, preferences for adjoining State bidders, and limitations after acquisition on intrastate branching or principal office location.

Our experience shows that making prudent, competitive bids for failing depository institutions, whether they be banks or thrifts, is an expensive and time-consuming process. Experts in accounting, credit, banking, treasury, audit and law are all involved, sometimes for weeks at a time. After a full analysis is completed, senior management must spend further time reviewing and approving and finally making the bid. "So why bother?" is a common reaction to an invitation to bid when even a carefully prepared and otherwise winning bid can be beaten by a lower bid made by an in-State institution.

Similarly, I would respectfully suggest that this subcommittee communicate to the Federal Reserve Board its encouragement to the Board to relax or eliminate existing and prospective tandem restrictions in connection with emergency thrift acquisitions, and I thank Mr. Wylie for his prompt action on that score.

In fact, looking at the practical realities, the subcommittee might even go so far as to giving consideration not only to eliminating competitive disadvantages to successful out-of-State bidders, as I have described, but enhancing the attractiveness of making a bid. For example, a successful out-of-State bidder might be permitted to acquire a friendly, financially sound institution of similar character and size for each troubled institution acquired within the State, or alternatively, be allowed to increase the geographic scope of the acquired troubled institution's business.

A somewhat similar approach to geographic expansion is reflected in a recently finalized rule of the Federal home loan bank board relating to regional acquisitions among thrifts.

In sum, what I am suggesting is for the subcommittee to respond to the changing character of the financial services market by inducing, rather than deterring, out-of-State institutions to bid in fair competition with in-State institutions.

Such a path, I believe, is essential if the regulators' bill is to result in less burden to the Federal insurance funds, a healthier banking industry, and a better served public.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Angermueller may be found at the conclusion of the hearing in the appendix.]

Chairman **St Germain**. Thank you, Mr. Angermueller.

Now we will hear from the chairman-elect of the bank holding companies, but also the chairman of the Shawmut Bank of Boston.

LaWare is not an Indian name, is it?

Mr. **LaWare**. No; it's sort of Americanized French.

Chairman **St Germain**. That Indian I have been staring at for many years is a Rhode Islander, and he's a very imposing looking Indian, I am going to tell you.

I will put your entire statement in the record and you may proceed.

STATEMENT OF JOHN P. LaWARE, CHAIRMAN-ELECT, ASSOCIATION OF BANK HOLDING COMPANIES; CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER, SHAWMUT CORP., BOSTON, MA, ACCOMPANIED BY JOHN S. RIPPEY, SENIOR VICE PRESIDENT OF THE ASSOCIATION

Mr. **LaWare**. Mr. Chairman and members of the subcommittee, I am John P. LaWare. I am chairman of the board and chief executive officer of the Shawmut Corp.; a regional bank holding company with headquarters in Boston, MA.

I am appearing before you today in my capacity as chairman-elect of the Association of Bank Holding Companies.

Accompanying me is John S. Rippey, who is senior vice president of the association.

The Association of Bank Holding Companies is composed of approximately 155-member companies ranging in size from Mid-Continental Corp. in Milwaukee, WI, with assets of $165 million, to Citicorp and BankAmerica Corp., whose billions are almost uncountable.

Shawmut, with assets of about $8 billion, is typical of the regional bank holding companies that make up our membership. Shawmut, by the way, is one of the 13 charter members of the association, which was organized in 1958.

We appreciate the opportunity to comment on H.R. 4701, the Financial Institutions Emergency Acquisition Amendments of 1986. The amendments extend and modify the authority Congress granted to Federal banking agencies in 1982 to arrange interstate acquisitions and mergers of failed banks and savings and loan associations and failing mutual savings banks. That statute was known as the Garn-St Germain Act, and I know that I will be forgiven in this body if I use some shorthand and just refer to it as the St Germain Act.

One intended effect of those amendments, as we see it, is to increase the incentive for out-of-State bank holding companies to bid for failing banks in certain States by allowing acquisition of the parent holding company as well as individual banks.

Our association has always supported requests from the banking agencies for additional regulatory and supervisory powers when we viewed them as necessary for the agencies to carry out their responsibilities under the law. The association strongly supported the first initiative regarding troubled institutions when it was submitted to Congress by the Federal Reserve Board in 1975, and we support the proposal before the subcommittee today. We believe Congess should promptly grant the regulators' request so that banks and bank holding companies encountering financial difficulties can be provided assistance in the most expeditious way possible.

In drafting H.R. 4701, the supervisory agencies sought to strike a balance between the changes in the law needed to accommodate the problems encountered by a number of troubled banks and bank holding companies and the inevitable objections that would be raised against the acquisition even of failing institutions across State lines. On the one hand, we support the proposed changes. On the other, we feel that the restrictions in the bill are counterproductive, bearing in mind that the legislation should be designed to enhance, not detract from, the appeal of what are, at best, problem filled acquisition opportuniites.

For example, the bill lowers the threshold measure for eligibility of banks from $500 to $250 million and permits a bank holding company to be acquired by an out-of-State bank purchaser, but only if the in-State company has a bank subsidiary or subsidiaries with assets of $250 million or more and is in danger of being closed, and these troubled assets must represent 33 percent or more of the holding company's banking assets.

Furthermore, the out-of-State acquirer is limited, after everything else, to making additional acquisitions only in the three largest metropolitan areas in the home State of the acquired institution. Thus the rescuer is expected to operate at a competitive disadvantage once the rescue is accomplished. That is hardly an inducement.

With regard to the percentage restriction on the impaired assets of a bank holding company, it is certainly not unreasonable to assume that a company with 33 percent of its banking assets impaired should constitute a basis for action by the regulators, including the invocation of the interstate bidding procedures. However, it seems unreasonable to assume that this would be the only situation warranting such action. How can we be sure that 33 percent is the correct number? It would be preferable, in my view, to allow the regulators the flexibility to use their judgment in problem situations and not have the 33-percent threshold.

Out-of-State bank holding companies acquiring a failing institution should be accorded the same geographic expansion rights as are available to in-State institutions. Geographic diversification is generally regarded as a strength. To deny geographic diversification opportunities to a rescued but perhaps still troubled bank holding company would be counterproductive and would make it much more difficult to restore the patient to good health.

We believe therefore that the metropolitan area limit should be eliminated.

It is not possible to quantify the effects such limitations may have in discouraging prospective bidders. Of course each situation is different. We do know that the constraints in the Garn-St Germain, or St Germain Act, have resulted in relatively few occasions when a formal bidding process has occurred involving a failed bank. In 4 years, in fact, the formal bidding process has been completed in just one instance. Only time will tell what effect the new restrictions in the regulators' bill would have, but they certainly constitute disincentives in a bill whose purpose is to attract healthy institutions to purchase and rehabilitate failing ones.

Furthermore, let us keep in mind that the purpose of the bill is to strengthen the ability of the regulators to deal with problem institutions in the relatively rare cases where purchasers cannot be found under present law. H.R. 4701 is not a nationwide interstate banking bill any more than was the 1982 St Germain Act. Of course, there is a nationwide interstate banking bill, H.R. 2707, approved by the full committee last June, and it is important that the two not be confused. One is not a substitute for the other.

Finally, the subcommittee is being urged to adopt extraneous amendments that would make the bill virtually unworkable. For example, it has been proposed that concentration provisions be added to H.R. 4701, even though H.R. 2707 specifically exempted emergency situations from the concentration standards that were contained in that bill. Similarly, others have suggested that the Community Reinvestment Act revisions in H.R. 2707 be added, even though that bill excluded emergency situations from the CRA amendments as well.

The preservation of a failing institution as an alternative banking option is perhaps the finest service to the community that can be provided by an out-of-State acquirer, and the attainment of this goal should not be handicapped by the addition of these extraneous amendments.

Attached to my prepared statement is a brief analysis of the concentration and community reinvestment standards that appear in H.R. 2707, which I am including for the information of the subcommittee.

That concludes my oral presentation. I would be happy to respond to questions if there is anyone left to ask them.

[The prepared statement of Mr. LaWare may be found at the conclusion of the hearing in the appendix.]

Chairman **St Germain**. You heard the rather intriguing dialog that occurred earlier with the Chairman of the Federal Reserve Board about the three metropolitan areas. I am going to conduct a quiz. Does anyone down there know why that was put in?

Mr. Angermueller nods no, Mr. Petty nods no, Mr. LaWare nods no.

With all due deference, Mr. LaWare, I thought John Petty and Hans Angermueller would catch that one real fast: Texas, Gramm, Connelly. Who are we kidding. It's political.

Mr. **LaWare**. We are not political people, Mr. Chairman, and it is hard for us to understand those things.

Chairman **St Germain**. It's politics. I guess the regulators felt that if they threw that in there then the yellow rose of Texas would bloom real full.

Mr. Angermueller, Mr. Petty, Mr. LaWare, let me ask you this, and I am not asking you to divulge any specifics, anything in particular, just a general question. I guess in some instances you people have knowledge of the fact that certain institutions are having problems prior to the regulators finding out about it, and I refer to the fact that in many instances your banks are contacted by downstream banks who are looking for lines of credit or some big bank CD's because there has been an outflow of deposits from their institutions.

Am I correct in that assessment?

Mr. **Angermueller**. Without going into the identity of any banks.

Chairman **St Germain**. I certainly don't want to do that.

Mr. **Angermueller**. It is certainly not limited to Texas. There are other areas of the country which have experienced different kinds of economic problems, and I think certainly we all know about the extraordinary and rapid drop in the price of oil. We have seen the impact of that in the energy portfolio of our own bank. We presume that in banks which have a higher concentration of energy loans than we do that it probably has had an even more aggravated impact. But we don't have any unique insight into specific problems.

Chairman **St Germain**. Do you have enough insight to be able to say to this subcommittee that this legislation with the amendments we advocate is indeed necessary?

Mr. **Angermueller**. I guess, Mr. Chairman, that I would feel that if the regulators feel it is an effective tool in dealing with deteriorating banking situations in areas of the country, which happens at this particular time to be focused on agriculture and energy, in the future there might be other areas that have different industries that are adversely affected.

Chairman **St Germain**. Let's hope not.

Mr. **Angermueller**. Let's hope not, we all agree.

I am not so sure that we should wait until the last moment of emergency before addressing the advisability of this legislation. I think that if it proves to be an effective tool, and we have heard the Chairman of the Federal Reserve say that he and other regulators feel it will be, I think today is not an inappropriate time to address the case.

Chairman **St Germain**. I am going to go to vote and when I return I will ask Mr. Petty and Mr. LaWare to address this same question that Mr. Angermueller has given us a reply to.

We will be in recess for about 4 or 5 minutes.

[Recess.]

Chairman **St Germain**. The subcommittee will come to order.

At the time we recessed for the vote I had asked a question of the panel because of some of the special knowledge available to them, and I did not ask them to in any way, shape, manner or form be specific, but rather general. The question to them was their evaluation as to the necessity for the legislation that is before us, certainly understanding the fact that they do have some reservations about some sections of the legislation.

When I banged the gavel Mr. Petty was about to reply.

Mr. **Petty**. Yes, sir; I think this is certainly appropriate standby discretion for a regulatory body, and I would add necessary besides appropriate. Who knows what problems lie in the future, and I think that it is appropriate to have a regulatory body able to have freedom to respond in an emergency, which is what this is, precautionary.

I am concerned that in drafting and administering it they may err on the side of constraining the definition to such an extent by perhaps excessively toning it down because of all the pressures to which you referred that they may not be able to attract all the capital that might be needed, but that is just a judgmental issue, anticipating a hypothetical market opportunity in the future.

The second part of your question concerns is there a problem out there. Yes, there is. In terms of some of our own individual experience, at the invitation of several banks in several different States over the past we have looked at institutions with an unusual degree of scrutiny to be able to make those judgments to bring in capital. So I can say on the basis of that that there are difficulties out there. Second, some of the interstate banking constraints deny the flow of capital or the normal market solution to such type of problems.

Chairman **St Germain**. Mr. LaWare.

Mr. **LaWare**. I would agree that there are problems. The Shawmut Corp. looked at probably 15 to 20 institutions, mostly thrifts that were having problems in other States and where the regulatory authorities were asking out-of-State organizations to look at them as possible takeovers. In the case in point, none of them met all of our criteria and we simply were unwilling and unable to take on the problems that they represented given the circumstances of acquisition.

But the problems do exist. They exist in the commercial side as well as in the thrift side.

I hope this legislation is never used, but I certainly hope it is passed.

I was trying to think how best to answer that part of your question. Maybe an illustration. I have had a fire extinguisher in my kitchen for 10 years. I have never had occasion to use it, but when the occasion arises, I want to know that the fire extinguisher is there. I kind of think that is the way the regulators are thinking about this particular bill.

Chairman **St Germain**. Mr. Barnard.

Mr. **Barnard**. Mr. LaWare, have you had it recharged?

Mr. **LaWare**. Yes, sir, regularly, when the tag says so.

Mr. **Barnard**. I just wanted to be sure that it was there to use when you needed it.

First of all, I want to welcome all three of you to our panel this morning. Your testimony has been very helpful as far as I am concerned.

Mr. Petty, have we satisfied your question about branching? In your testimony I think you had some question about the unfairness of not being able to branch, and I think we have established that as far as a branch banking State is concerned, that would not be a prohibition.

Mr. **Petty**. I think the restriction was more on a bank holding company.

Mr. **Barnard**. You were thinking about the other provision.

Mr. **Petty**. The other half.

Mr. **Barnard**. Mr. Angermueller, in the expansion that Citicorp has had in Illinois, California, and Florida have they been FSLIC assisted or completely unassisted?

Mr. **Angermueller**. They have been assisted.

Mr. **Barnard**. All of them or just some of them?

Mr. **Angermueller**. Each one is a separate and slightly different deal, but they all have some element of FSLIC support.

Mr. **Barnard**. This question comes up all the time. It came up in H.R. 2707, and I am sure when we go to mark up it is going to come up in this, and I would just like to have you gentlemen respond, and that is the subject of concentration.

Let's begin with, Mr. Angermueller. Do you have any concerns about concentration, No. 1, and No. 2, are the concerns that have been expressed on this committee from time to time legitimate?

Mr. **Angermueller**. If I may respectfully say, I think the concerns have been overstated. I think, of the industries that come to mind, banking, in my judgment, is probably one of the least concentrated industries we have in this country, industrial or financial.

Using Mr. LaWare's expression of the untold billions of dollars that Citicorp has, nevertheless, we still represent, whether you judge us by assets or whether you judge us by domestic deposits, about 2 percent of either the domestic assets or the domestic deposits of all U.S. depositories. If you take the top three firms in the banking business, Citibank, Bank of America and Chase, I doubt that you would even get up to 7 percent. I guess by any antitrust or concentration criterion that I am aware of, less than 10 percent among the top three does not reach the level of concern that I think justifies the kind of attention that has been addressed to this issue.

Mr. **Barnard**. On a worldwide basis, what happens to the big banks in this country? Where do we stand there?

Mr. **Angermueller**. I think we are probably still No. 1, but I would venture to say the next three or four are all non-U.S. before you get to Bank of America and Chase. If you go back 20 or 30 years, the top three U.S. banks were always very substantially larger than the non-U.S. banks. Today I would be surprised if we have three or four of the top 10 banks of the world.

Mr. BARNARD. If a concentration figure was put on the regional interstate banking bill or this bill, what would be a reasonable concentration figure, if at all?

Mr. ANGERMUELLER. I really would hesitate to give a suggestion. I think that it will depend upon particular markets where the concentration may or may not occur. I think that absolutes, such as are contemplated by H.R. 2707, are inappropriate. For literally years the Fed has balanced this issue of public benefits verus excessive concentrations of power under 4(c)(8). I think their expertise, combined with that of the Department of Justice, are perfectly adequate to deal with the issues of what would be excessive and what would not be, and I would frankly recommend against trying to fix in stone some kind of statutory criterion of absolute limits.

Mr. BARNARD. In other words, you would rather the antitrust provisions of the Fed apply.

Mr. ANGERMUELLER. Yes, sir, given the discretion and depending upon given circumstances at the time.

Again, I just want to comment that H.R. 2707, as I read it at least, does not apply to the kind of situations that are addressed by the regulators' bill.

Mr. LAWARE. If I might comment on that, Congressman. I guess you could qualify us as one of the little guys who might feel threatened by concentrations of power. We are less than 5 percent the size of Citicorp, and yet I would agree completely with my colleague that concentration issues are not important here and that the existing antitrust laws and the existing administration by the Federal Reserve constitute adequate protection.

Mr. BARNARD. Gentlemen, what is your opinion as to how this bill should proceed hopefully through the committee? Do you think it should be encumbered with any other types of legislation?

I will start with Mr. Petty.

Mr. PETTY. I definitely do not think it should be encumbered. I think it is a clean precautionary bill that gives the regulators the discretion they require. Concentration in particular bothers me when it gets beyond the visceral reaction: what are the criteria? Not a criteria by another county, not a criteria by industries; no criteria of concentration pertains in a financial service; no criteria of concentration pertains when you fracture the market, when we in the business world segment the market down to components of it, and the fact that we deal in a world market, to take some arbitrary number and apply it simply is not relevant to the way business is done. So in terms of concentration, in terms of H.R. 20, in terms of the other things in CRA, I think it would encumber the bill and burden its passage.

Mr. BARNARD. Mr. Angermueller.

Mr. ANGERMUELLER. I think I share the views of Mr. Petty entirely, and indeed they reflect the views of the Chairman of the Federal Reserve, as I understood them, who says that this bill, which is a kind of a surgical tool that the regulators feel would be advisable to have to deal with specific trouble situations, should not be encumbered with legislation that is not directly related to it for fear it would unduly delay or limit the surgical precision of the statute that the regulators are recommending.

Mr. **LaWare**. I sense some urgency on the part of the regulators in proposing this legislation, and certainly that was confirmed by Chairman Volcker, and therefore, to add anything that is highly controversial to the bill that might delay its passage I think probably is counterproductive.

Chairman **St Germain**. Mr. Wylie.

Mr. **Wylie**. Mr. Angermueller, did you want to comment on Chairman Volcker's statement in response to my putting the communication to him about relaxing or eliminating existing tandem restrictions?

Mr. **Angermueller**. Only, first of all, to express my gratitude that you brought it up so forthrightly and so promptly.

But second, 5 years ago, Chairman Volcker said, "we knew what we were getting into," and that is true. We certainly knew the existence of the restrictions and indeed we thought we had properly estimated the potential impact of those.

However, as we now see some of the practical detriments of operating under those restrictions, we frankly think the time has come to review them. The first time they were ever introduced was 5 years ago. We think that is an appropriate period during which we have operated these three S&L's within the context of those restrictions. We can and are in fact living under them.

On the other hand, we think we can better serve the public and better serve our shareholders if those restrictions are modified or eliminated.

I was intrigued to hear the Chairman comment upon how difficult it might be to see some of the subsidiaries of a bank holding company group, such as he described in Texas, having individual major members separated from the holding company because it will deprive them of operational efficiencies and the backstop of the diversified portfolio. That is exactly what is happening with our S&L's. They are isolated from the efficiencies that Citicorp could otherwise provide.

So we think the time has come to review those and perhaps relax them, and in doing that also provide a better atmosphere within which to have some of these future troubled acquisitions by other banks can take place.

Mr. **Wylie**. He said you knew what you were getting into, and you said that is true. The panel today, it seems to me, emphasizes a point of view that Congress should moderate disincentives, I think is the way to put it, in order to enhance the attractiveness of institutions which by definition are not inherently attractive. I think Mr. LaWare stated that the purchase of a failing institution is an undertaking which is prone to unpleasant surprises and higher costs than anticipated. Mr. Angermueller, you also stated similar concerns.

Would you mind elaborating on that point just a little bit for the panel, Mr. LaWare?

Mr. **LaWare**. Perhaps our own experience is a good criterion. We have three criterion which we apply to looking at trouble situations.

First of all, the institution that we are interested in or looking at must be in a market that is attractive to us.

Second, the problems that got it in trouble have to be dealt with or we have to feel that we can deal with them within some reasonable timeframe, 3 to 5 years.

The third part is that the drag on our company by taking over the failing institution must be severe enough to damage or penalize our own shareholders.

Those sound like motherhood kinds of issues, and they are, but that is the way a tough-minded institution looks at these so-called opportunities. That is why I think it is terribly important that if the intent of this bill is to enhance the attractiveness of these situations for outside bidders so that private capital can solve the problem, that we have been suggesting these modifications to what has been presented as the regulators' bill.

Mr. **Wylie**. You seem to be only lukewarm, at best, for H.R. 4701.

Mr. **LaWare**. Oh, no. I am sorry if I was misunderstood. I am not lukewarm about it at all. I am in favor of it. I think it could be improved by incorporating some of the recommendations that I suggested.

For example, we were talking about banks that were below the $250 million threshold. They are as worthy of saving as banks above $250 million, and if there are not other institutions in a State which have an appetite to come to the rescue, then why not be able to go out of State as the final solution, particularly since in some towns there may be only one bank.

I grew up in a little town in Wisconsin where there were two little banks, and one of them didn't open after the bank holiday. I think it took 30 years for my father to get back his deposit. There wasn't any deposit insurance in those days. It was reorganized and the local people took on the responsibility of paying off the depositors over the years. Father would get a check for $3.80 and then he would get one for $20, and I think his $500 was finally paid off after 30 years. Those are the kind of situations that are very severe.

Mr. **Wylie**. Did you want to comment, Mr. Angermueller?

Mr. **Angermueller**. I think the criteria that Mr. LaWare has outlined are not essentially different from ours. We look at the market, and in the case of the S&L's, obviously California, Illinois and Florida were three very attractive markets. We look at what we believe are going to be the resources that are going to have to be invested in terms of money, people, and imagination in developing those markets and then what the prospective returns will be. That we have done with those three S&L's and today they are on the verge of turning the corner, but it has taken 5 hard, arduous years.

Mr. **Wylie**. Thank you.

Chairman **St Germain**. Mr. Manton.

Mr. **Manton**. Thank you, Mr. Chairman.

Mr. Angermueller, there has been a lot of debate and there continues to be a lot of debate about the level of concentration in the banking industry. Many witnesses before this committee and even some of our Members have in the past painted a picture of large

New York banks which, if allowed to cross State lines, would swallow up defenseless $10 million to $20 million holding companies in the Southeast, Southwest, and Midwest.

As vice chairman of the largest bank holding company in the country, what are your views about the level of concentration in the banking industry as compared with other industries?

Mr. **ANGERMUELLER**. The issue of Citicorp and getting into new markets and swallowing up banks is a little bit like the Wizard of Oz. Once you knock down the screen, there is a relatively normal-sized competitor there.

When we get into a new market, we are the new boy on the block. We have to prove ourselves; we have to compete with the fellows who have already been on the block for a good long time.

I think perhaps the most illustrative example really occurred in kind of a macrosense back in 1975 when the big New York City money center banks were permitted to expand into upstate New York. When we went up there, we cleaned up the market and took out every marginal and lousy credit that was around, as did the other big banks. To use the expression of one of my colleagues, we were left with a smile and our socks and retreated back to New York to try to figure out what the heck had happened.

The fact is that size alone does not guarantee successful entry into a market. I think John LaWare's comment about being unafraid of competing head on with Citicorp is illustrative of that thing.

Frankly, in those markets where we have entered, we have managed to be, I hope, an effective competitor, but we certainly did not swallow up the competition. Frequently we were threatened the other way.

Mr. **MANTON**. Mr. Petty, last year in response to these fears and, I might add, misconceptions about concentration, this committee in the final hours of the markup on H.R. 2707 adopted a concentration level of 1 percent as a barrier for interstate acquisition.

What are your views on that subject?

Mr. **PETTY**. Congressman, I think it is arbitrary and irrelevant. It is certainly irrelevant to this legislation, which is emergency standby legislation for discretionary power for the regulators. But irrelevant in a much broad sense, because we are talking about the financial service industry of which the commercial banks are but a diminishing part when you measure the total financial assets of the country.

In a competitive, day-to-day basis, we think not about total assets of Citibank; we think about this particular product area, and we take them head on every day, all day. We fight it out. Sometimes we win, sometimes we lose.

I am not really bothered about their total liquidity. I think it is irrelevant to the competitive marketplace in which they operate.

Mr. **MANTON**. Mr. LaWare, again expanding on the concentration argument, how would you compare the banking industry with, for example, auto, oil and other aspects of business in terms of concentration?

Mr. **LAWARE**. I think that Mr. Angermueller covered it very well when he said that the top three banks, if you combine them all into one institution, the resulting institution would have less than

7 percent of the deposits of the banking system in this country. That does not constitute concentration like the way four domestic companies divide the domestic automobile market.

I agree with Mr. Angermueller and Mr. Petty that it is an irrelevant concept as it applies to banking.

Mr. **Manton**. Thank you.

Thank you, Mr. Chairman

Chairman **St Germain**. Mr. Angermueller, I don't think there is a member of the committee that can't recite the smile socks northern New York story. We have heard that damn thing so many times. It is getting to be a pain. [Laughter.]

Mr. **Petty**. Marine Midland is very proud of it, Mr. Chairman. That's our home base.

Chairman **St Germain**. Well, I'm sick of both of you telling that story. Have your script writers write a new one for you.

Mr. Wortley.

Mr. **Wortley**. I am kind of pleased that Mr. Angermueller and Mr. Petty came here today, because they are the gentlemen who are perceived to be wearing the black hats. They are the so-called culprits. Your appearance here today gives you an opportunity to respond to some of the concerns that many people on this committee have about not only this bill but about interstate banking in general.

Mr. Manton stole a little of my smoke, and the chairman doesn't want me to pursue that upstate-downstate thing and I presume that because John Petty was in there before you, Mr. Angermueller, that is the reason you met with so much tough competition when you came upstate.

Let's move on to the other side of this issue. I would ask each of you this. What do you really believe are the benefits to the consumer, the benefits to commerce if we do have interstate banking? I will go to Mr. Angermueller first.

Mr. **Angermueller**. I guess we see it as providing a number of benefits, and this is based now upon our experiences not only with the S&L's in Florida, California and Illinois, but also with our operation in South Dakota, our entry into Maine some years ago under their statute, and more recently our proposed entry into Maryland, Nevada and Arizona, all of which are in the process.

I think what we bring to the State when we enter in as a new competitor is competition, which generally benefits the market by providing lower prices and more innovative and competitive products. We certainly provide jobs simply to get in. We are a purchaser of local supplies and local services, including buildings if we are erecting or buying new ones. We think we benefit, if we acquire a bank, the shareholders of that bank or the creditors of that bank, and finally, we generally end up being a relatively substantial taxpayer. All of those are consumer benefits to the community that we serve.

In addition, we think of ourselves as a good corporate citizen.

Some 10 months ago, at the request of the chairman, I wrote a rather extensive letter dated June 14, 1985, as to our then existing experiences and the benefits that we created in the communities that we entered. I wonder if it would be permissible to enter that letter into the record.

Mr. **Wortley.** We would appreciate having it for the record.

Mr. **Angermueller.** Thank you very much, Mr. Wortley.

[The letter dated June 14, 1985 to Chairman St Germain from Mr. Angermueller can be found in the appendix.]

Mr. **Wortley.** Do you have any figures available as to how much more you loan out, let's say in my area of central New York, the Syracuse area, how much more you put in there in the way of loans than you have in the way of deposits? I do know there are some New York banks up there who have a lot more invested in the community through loans than they have deposits.

Mr. **Angermueller.** As you may know, we got into the retail banking business aggressively just about ten years ago, and it is only within the last 3 months that we are in rough balance between our consumer deposits and our consumer loans. So for a period of nine or ten years we were actually importing capital to some extent from the money markets domestically and to a large extent from the money markets overseas in order to fund those consumer assets. But today, within a relatively narrow margin, we are just now about in balance, which is where we would like to stay.

Mr. **Wortley.** You can keep that money pouring in to central New York. We need it.

Mr. **Angermueller.** Thank you. We intend to.

Mr. **Wortley.** Mr. Petty.

Mr. **Petty.** In response to your primary question, Mr. Wortley, what another bank brings to a community, if I were to summarize it in one phrase, is it is another place for the consumer to comparison shop. Each day a consumer will come in, will test the metal of the store next door. That is what competition is all about, what efficiency is all about. They hire new employees, bring some skills from other areas, and learn a lot, by the way, from the local supplier, too.

Mr. **Wortley.** Since New York banks have been in central New York, I can't think of, in our own marketplace, a single local bank that has gone out. In fact, we even have a new bank that is starting up in Syracuse in the next couple of months.

If we had had more interstate banking, do you think it would have done anything to deter the farm crisis that we are confronted with now, the banking crisis?

Mr. **Petty.** I would say certainly that the influence of the financial service industry of New York has led the economic recovery of New York State. I think we New Yorkers are sort of proud to say that one out of every five jobs created in the country in the last year have been created in New York State, and that has been led by the financial service industry.

If you want to talk about the Manhattan marketplace, the competition we feel particularly heavily in that from new banks being opened and from foreign banks opening up new offices and branches, like 300 in number in that marketplace. They have only enhanced very dramatically the growing business environment, vibrant environment of New York City. So by whatever example, upstate or down, east or west, New York State has benefited dramatically from having an open marketplace, and we think it is in the national interest to share that approach.

Mr. **Wortley**. My time has expired, but I wonder if I might just ask one final question. Mr. Angermeuller or Mr Petty, do either of you have any statistics on employment in the banking industry specifically, the change in amount of employment over the past 10 years.

Mr. **Petty**. They are definitely available.

Chairman **St Germain**. Would you please submit that for the record?

Mr. **Petty**. Certainly.

Mr. **Wortley**. My time has expired. I thank you, gentlemen.

Thank you, Mr. Chairman.

Chairman **St Germain**. Mr. Barnard, for a brief question, he tells me.

Mr. **Barnard**. Gentlemen, I just want to clear up one thing, the $250 million threshold. Yes or no, do you think that the threshold could be dropped below the $250 million mark?

Mr. **LaWare**. Yes.

Mr. **Angermueller**. Yes.

Mr. **Petty**. Yes.

Mr. **Barnard**. You were here this morning when I talked with Chairman Volcker about trying to provide somewhere in here for farm banks if it was just on a specified, pinpointed basis. I do not know that we are going to be able to do that. But if it was possible to do that, do you think, No. 1, it would be justified, and No. 2, that the Association of Bank Holding Companies would support that?

Mr. **LaWare**. Yes, I do. Our feeling is that the regulators ought to have the authority to go to the out-of-State bidding process regardless of the size of the bank if in fact there is no intrastate mechanism that is available to keep that bank in business.

Mr. **Barnard**. What happens is we still come back to what is the consumer interest in all of this, and I can see the consumer interest here would be to save the community bank in the farming area, and a lot of times that could be done. It may not be done, but on the other hand, with FSLIC or FDIC assistance and some outside ownership, it could be done. That is what you call bringing capital in. I just feel like it is worth addressing in this bill.

Mr. **Petty**. In the interstate banking bill, the Douglas amendment as now drawn, you cannot own more than 5 percent of the bank. We were offered 20 or 15 percent of banks in farm areas which we were considering but could not do that by law without going to the control position. That is what I mean when I say I think our laws are constraining and not responsive to the community needs.

Mr. **Angermueller**. If I might, Congressman Barnard, I think if you drop the floor entirely, I would certainly favor that. Since there are adequate procedures in the bill to give preference to the in-State bidder, I would be a little reluctant to just identify farm banks, because tomorrow it may be some different industry that is concerned. But once you have dropped the threshold totally, or substantially down, it seems to me that the procedures contemplated by the regulators' bill, which would give in-State priorities, would be adequate to deal with the situation.

Mr. **Barnard**. Thank you very much.

Chairman **St Germain**. Are there any further questions?

[No response.]

Chairman St Germain. We would like to express the appreciation of the subcommittee to you gentlemen for your assistance in this matter.

I have got a few questions I am submitting in writing, as do some of my colleagues, and we would appreciate the answers as soon as possible so that we can be prepared when the markup process comes.

The subcommittee stands adjourned until 10 a.m. tomorrow morning.

[Whereupon at 1:30 p.m., the subcommittee was adjourned to reconvene at 10 a.m., Thursday, May 8, 1986.]

APPENDIX

OPENING STATEMENT OF HON. CHALMERS P. WYLIE
HEARINGS ON PROPOSED LEGISLATION BY FEDERAL REGULATORY AGENCIES CONCERNING EMERGENCY INTERSTATE ACQUISITIONS

May 7, 1986

Thank you Mr. Chairman. I would like to welcome Chairman Volcker and our distinguished panel of witnesses.

I am inclined to support the extension of the Garn-St Germain emergency acquisition provisions. It is my judgment that these provisions have been extremely useful to the regulators in resolving problems confronted by some of our financial institutions. And the regulators have now asked us to enhance these authorities to further increase their options and flexibility in responding to financial institution failures.

I think all would agree that the banking supervisors must have adequate tools to deal with emergency situations quickly and effectively. The disagreement seems to arise over the question of present need -- what exactly is the extent and magnitude of the current banking problem. Of course, we need to explore these questions and thoroughly evaluate the many alternatives suggested by the witnesses and that's exactly what we're doing in these hearings.

I do think we need to keep our perspective. The regulators have been charged by the Congress with the job of maintaining confidence in our banking system and they must have any needed authorities to carry out that responsibility. I think Chairman Volcker brings candor to this debate with his statement that the additional powers sought by the regulators are precautionary, that they perhaps will, in the end, not have to be used, but that it would be imprudent to rely on that hope.

Mr. Chairman, I speak from the perspective of one who lived through a crisis in confidence involving some 70 thrift institutions in Ohio just last year. That experience clearly demonstrated that regulators must be prepared and must have necessary authorities. That experience also clearly demonstrated that in an emergency situation, an interstate acquisition can have far reaching benefits for depositors and local communities. In Ohio, the Chase Manhattan Bank acquired six S&L's insured by the ODGF (including 22 branches) and converted them into a state chartered bank. This action brought immediate benefits to thousands of depositors whose accounts had been frozen for some time and continues to provide benefits in expanded deposit account services, employment (which will increase by over 100 by year-end 1986), and the existence of a strongly capitalized competitor that is currently extending loan commitments to Ohioans at a rate of over $1 million a day.

Moreover, this new institution picked up the pieces in the aftermath of the failure of the ODGF -- pieces that might not have been picked up otherwise. And, of course, the Chase Bank is subject to all the same laws and regulations, including the Community Reinvestment Act, as other Ohio institutions.

Mr. Chairman, I look forward to hearing from our distinguished witnesses.

FERNAND J. ST GERMAIN, RHODE ISLAND, CHAIRMAN

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May 1, 1986

Honorable Paul A. Volcker
Chairman, Board of Governors
Federal Reserve System
20th and Constitution Ave., N.W.
Washington, D.C. 20551

Dear Chairman Volcker:

To assist this Subcommittee in the discharge of its responsibilities, you are requested to appear on Wednesday, May 7, 1986, in Room 2128 Rayburn House Office Building at 10:00 a.m., to provide testimony to the Subcommittee on H.R. 4701, the Financial Institutions Emergency Acquisitions Amendments of 1986, legislation proposed by the Federal bank regulatory agencies, and on related issues. More specifically, you are asked to testify on the matters of concern to the Subcommittee set forth in the enclosure.

In accordance with Committee Rules, please deliver 175 copies of your prepared statement to Room B303 Rayburn House Office Building twenty-four hours in advance of your scheduled appearance. Your statement in its entirety will be included in the hearing record and, if delivered as requested, the statement will be made available to all Subcommittee Members in advance of the hearing. To provide all Subcommittee Members with sufficient time for questioning, the oral presentation of your prepared statement must be limited to twenty minutes.

Sincerely,

Fernand J. St Germain
Chairman

Enclosure
FJStG:dTv

1. H.R. 4701, the Financial Institutions Emergency Acquisitions Amendments of 1986, would allow assisted and unassisted extraordinary acquisitions of insured banks (and their parent holding companies and affiliates) if the bank is "in danger of closing."

Please provide the Subcommittee with the number of institutions presently qualifying under the legislation's definition of "in danger of closing," the location on a state-by-state basis of these institutions, and the asset size levels of these institutions.

2. Is it possible for a nonfinancial institution to avail itself of any of the provisions of H.R. 4701 in order to acquire an insured bank?

3. H.R. 4701 would dispense with the notice and hearing requirements of section 3(b) of the Bank Holding Company Act. Section 3 of that Act, which establishes certain procedures for the Federal Reserve's approval of a bank holding company's acquisition of bank shares or assets, already includes an expedited procedure whereby the Federal Reserve can waive the notice and hearing requirements of section 3(b) if it finds it must do so immediately to prevent a probable failure.

In light of the existing provisions in section 3(b) providing for waivers of notice and hearing requirements, why is another waiver needed for approval of these assisted and unassisted extraordinary acquisition transactions?

4. H.R. 4701 would either reduce or eliminate the post-approval waiting period required under section 11 of the Bank Holding Company Act, which sets forth certain time frames for the consummation of mergers and acquisitions under section 3 of that Act, as well as setting guidelines for antitrust actions challenging such transactions. Section 11 already includes language stating that a merger or acquisition under section 3 can be immediately consummated upon the Federal Reserve's approval, if the Board finds it must act to prevent the probable failure of a bank or bank holding company involved in the merger.

In light of the existing language of section 11 that allows for the elimination of this post-approval waiting period when a probable failure is involved, why is another provision needed eliminating this post-approval waiting period for these assisted and unassisted extraordinary acquisition transactions?

5. Section 11 of the Bank Holding Company Act requires that antitrust actions arising out of a merger or acquisition under section 3 must be started "prior to the earliest time" a section 3 approval may be consummated. In eliminating the post-approval waiting period before which a section 3 transaction may be consummated, H.R. 4701 could affect the timely filing of antitrust actions challenging these transactions.

Please comment on the antitrust implications of eliminating the post-approval waiting period in section 11 for such transactions. Please state whether the Department of Justice's Antitrust Division has been notified of this change, their reaction to such a change, and indeed their reaction to the legislation as a whole.

6. H.R. 4701 would allow the Federal Reserve to waive the notice and hearing requirements of section 4(c)(8) of the Bank Holding Company Act for applications filed in connection with an assisted or unassisted extraordinary interstate transaction.

Is this waiver in contemplation of possible mergers and acquisitions made in connection with an assisted or unassisted extraordinary interstate transaction, which may involve institutions engaging in activities which are not closely related to banking, directly or indirectly, either as an acquiror or an acquiree under this legislation?

7. H.R. 4701 would preserve the eligibility of insured banks (or their parent holding company or affiliated banks) to be acquired by an out-of-state bank or bank holding company, even after FDIC assistance has been granted under section 13(c) of the Federal Deposit Insurance Act, provided such assistance was initially granted after April 15, 1986 and remains outstanding.

Should out-of-state banks and bank holding companies continue to be allowed to acquire institutions receiving FDIC assistance, even after those institutions may no longer be in danger of closing or when the severe financial conditions which precipitated the assistance have subsided?

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

PAUL A. VOLCKER
CHAIRMAN

May 5, 1986

The Honorable Fernand J. St Germain
Chairman
Subcommittee on Financial Institutions
  Supervision, Regulation and Insurance
Committee on Banking, Finance and
  Urban Affairs
House of Representatives
Washington, D.C. 20515

Dear Chairman St Germain:

Enclosed are my responses to the seven specific questions forwarded in your letter dated May 1, with respect to H.R. 4701, the Financial Institutions Emergency Acquisitions Amendments of 1986. I am looking forward to appearing before the Subcommittee on Wednesday to testify on the proposed legislation.

Sincerely,

Paul

Enclosure

Responses to Questions posed by Subcommittee on Financial Institutions Supervision, Regulation and Insurance

1. H.R. 4701, the Financial Institutions Emergency Acquisitions Amendments of 1986, would allow assisted and unassisted extraordinary acquisitions of insured banks (and their parent holding companies and affiliates) if the bank is "in danger of closing."

Please provide the Subcommittee with the number of institutions presently qualifying under the legislation's definition of "in danger of closing," the location on a state-by-state basis of these institutions, and the asset size levels of these institutions.

Answer: A determination of the number of institutions presently qualifying under the legislation's definition of "in danger of closing" would require a detailed examination of each bank by its chartering authority, and would depend significantly on the particular facts of each case, including the type of problems faced by the bank and its capital position. We do not anticipate a large number. However, as the Subcommittee is aware, there are a significant number of problem banks in the country at this time. The number of bank failures has increased steadily in the past several years, with 120 bank failures in 1985. The FDIC has indicated that it is likely there will be at least as many this year and that there are over 1100 banks on its problem bank list. There should be no implication that a bank listed as a problem bank is in danger of closing. The vast majority, as in the past, will be able to resolve their problems without FDIC assistance or use of the procedures provided in this bill. Nevertheless, among these banks are a few that may qualify over time, and the purpose of the legislation is to avoid those particular institutions infecting others.

2. Is it possible for a nonfinancial institution to avail itself of any of the provisions of H.R. 4701 in order to acquire an insured bank?

Answer:

H.R. 4701 does not alter in any way the provisions of section 4 of the Bank Holding Company Act that prohibit a nonbanking company from acquiring a bank.

Thus, a nonfinancial institution may not acquire an insured bank under the provisions of H.R. 4701. H.R. 4701 permits the interstate acquisition of a failed or failing bank only by a bank holding company.

3. H.R. 4701 would dispense with the notice and hearing requirements of section 3(b) of the Bank Holding Company Act. Section 3 of that Act, which establishes certain procedures for the Federal Reserve's approval of a bank holding company's acquisition of bank shares or assets, already includes an expedited procedure whereby the Federal Reserve can waive the notice and hearing requirements of section 3(b) if it finds it must do so immediately to prevent a probable failure.

In light of the existing provisions in section 3(b) providing for waivers of notice and hearing requirements, why is another waiver needed for approval of these assisted and unassisted extraordinary acquisition transactions?

Answer:

In order to facilitate the acquisition of a failed or failing bank, H.R. 4701 would permit an out-of-state bank holding company to acquire non-failing banks affiliated with the troubled bank in the same bank holding company. The procedures currently provided in section 3(b) of the Bank Holding Company Act that permit the Board to waive the notice and hearing rights afforded to the appropriate chartering authority under the Act for a failed or failing bank would not permit the Board to authorize the immediate acquisition of these affiliated non-failing banks, even though the acquisition of these banks may be essential to or an integral part of the proposal to acquire and rehabilitate the failed or failing bank. H.R. 4701 would permit the Board to waive the notice and hearing provisions as they apply to these affiliated banks where the acquisition of the affiliated banks is in connection with the acquisition of the troubled bank under the procedures provided in the bill.

It is important to note that while H.R. 4701 would permit waiver of the notice and hearing provisions of the Act, it also establishes another procedure requiring that the state bank supervisor be given notice that a transaction under H.R. 4701 is contemplated and permitting the state supervisor an opportunity to express views regarding the proposal and to prevent an out-of-state acquisition where an in-state or regional resolution of the problems of the troubled bank may be arranged.

4. H.R. 4701 would either reduce or eliminate the post-approval waiting period required under section 11 of the Bank Holding Company Act, which sets forth certain time frames for the consummation of mergers and acquisitions under section 3 of that Act, as well as setting guidelines for antitrust actions challenging such transactions. Section 11 already includes language stating that a merger or acquisition under section 3 can be immediately consummated upon the Federal Reserve's approval, if the Board finds it must act to prevent the probable failure of a bank or bank holding company involved in the merger.

In light of the existing language of section 11 that allows for the elimination of this post-approval waiting period when a probable failure is involved, why is another provision needed eliminating this post-approval waiting period for these assisted and unassisted extraordinary acquisition transactions?

Answer:

As with the notice and hearing requirements of the Act, H.R. 4701 would permit the Board to reduce the normal 30-day post-approval waiting period to permit the expedited or immediate acquisition of non-failing banks that are affiliated with the failing bank. Otherwise, the acquisition of the troubled bank would generally have to await the expiration of the 30-day waiting period applicable to its affiliated non-failing banks, even though in interstate transactions there are generally no substantial competitive issues.

5. Section 11 of the Bank Holding Company Act requires that antitrust actions arising out of a merger or acquisition under section 3 must be started "prior to the earliest time" a section 3 approval may be consummated. In eliminating the post-approval waiting period before which a section 3 transaction may be consummated, H.R. 4701 could affect the timely filing of antitrust actions challenging these transactions.

Please comment on the antitrust implications of eliminating the post-approval waiting period in section 11 for such transactions. Please state whether the Department of Justice's Antitrust Division has been notified of this change, their reaction to such a change, and indeed their reaction to the legislation as a whole.

Answer:

The Department of Justice has been consulted regarding the provisions of this bill and I understand it has indicated that it has no objection to the provisions permitting the reduction of the post-approval waiting period to 5-days for all banks acquired in a transaction under H.R. 4701 because this period would permit the Department sufficient opportunity to initiate an action under the antitrust laws if appropriate. The Department has also indicated that it would have no objection to permitting waiver of the post approval period entirely for an interstate transaction under H.R. 4701 with the concurrence of the Attorney General. The Board would continue to follow its current practice of notifying and consulting with the Department at the time an application involving an emergency acquisition is received. This permits the Department an opportunity to express its views to the Board regarding the antitrust implications of an acquisition and, where necessary, to initiate an action under the antitrust laws. Further, H.R. 4701 does not in any way reduce the responsibility of the Board under the Bank Holding Company Act to consider the antitrust implications of a proposed acquisition and to deny an application that would violate the antitrust standards in the Act.

6. H.R. 4701 would allow the Federal Reserve to waive the notice and hearing requirements of section 4(c)(8) of the Bank Holding Company Act for applications filed in connection with an assisted or unassisted extraordinary interstate transaction.

Is this waiver in contemplation of possible mergers and acquisitions made in connection with an assisted or unassisted extraordinary interstate transaction, which may involve institutions engaging in activities which are not closely related to banking, directly or indirectly, either as an acquiror or an acquiree under this legislation?

Answer:

No. The provisions of H.R. 4701 that would permit the Board to waive the notice and hearing requirements of section 4(c)(8) of the Bank Holding Company Act do not eliminate the requirement of section 4 of the Act that a bank holding company engage only in banking activities and activities deemed to be closely related to banking and a proper incident thereto. Accordingly, the provisions of H.R. 4701 permitting waiver of the notice and hearing requirements of section 4(c)(8) would not permit a bank holding company acquiring a bank under H.R. 4701 to engage in any nonbanking activities that are not closely related to banking.

These provisions of H.R. 4701 would only permit the Board to authorize the immediate acquisition of companies affiliated with a troubled bank that engage in nonbanking activities that are closely related to banking or are otherwise permissible for bank holding companies where the acquisition of these nonbanking companies is part of the same transaction in which an affiliated bank in danger of closing is acquired.

7. H.R. 4701 would preserve the eligibility of insured banks (or their parent holding company or affiliated banks) to be acquired by an out-of-state bank or bank holding company, even after FDIC assistance has been granted under section 13(c) of the Federal Deposit Insurance Act, provided such assistance was initially granted after April 15, 1986 and remains outstanding.

Should out-of-state banks and bank holding companies continue to be allowed to acquire institutions receiving FDIC assistance, even after those institutions may no longer be in danger of closing or when the severe financial conditions which precipitated the assistance have subsided?

Answer:

The purpose of permitting out-of-state bank holding companies to acquire institutions receiving FDIC assistance which remains outstanding is to permit the FDIC to reduce any ongoing cost that the FDIC may bear from continued assistance to the institution and, wherever possible, to recover the cost of its financial assistance to the bank. As under the current provisions of the Garn-St Germain Act, the FDIC would be required to follow the bidding procedures currently provided that give priority to in-state depository institutions. Moreover, a bank would be eligible for acquisition under H.R. 4701 after it has received FDIC assistance only if the bank would have qualified for an interstate acquisition under the bill at the time FDIC assistance was provided (i.e., the bank had total assets of $250 million or more, and was closed or in danger of closing).

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April 30, 1986

Mr. Hans H. Angermueller
Vice Chairman
Citicorp N.A.
Suite 810
1090 Vermont Avenue, N.W.
Washington, D.C. 20005

Dear Mr. Angermueller:

To assist this Subcommittee in the discharge of its responsibilities, you are requested to appear on Wednesday, May 7, 1986, in Room 2128 Rayburn House Office Building at 2:00 p.m., to provide testimony to the Subcommittee on proposed legislation by the Federal regulatory agencies on emergency interstate acquisitions and related matters. More specifically, you are asked to testify on the Financial Institutions Emergency Acquisitions Amendments of 1986, the legislation proposed by the Federal regulatory agencies, and related matters.

In accordance with Committee Rules, please deliver 175 copies of your prepared statement to Room B303 Rayburn House Office Building twenty-four hours in advance of your scheduled appearance. Your statement in its entirety will be included in the hearing record and, if delivered as requested, the statement will be made available to all Subcommittee Members in advance of the hearing. To provide all Subcommittee Members with sufficient time for questioning, the oral presentation of your prepared statement must be limited to ten minutes.

Sincerely,

FJ St Germain

Fernand J. St Germain
Chairman

FJStG:dTv

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April 30, 1986

Mr. John R. Petty
Chairman
Marine Midland Bank
140 Broadway
New York, New York 10015

Dear Mr. Petty:

To assist this Subcommittee in the discharge of its responsibilities, you are requested to appear on Wednesday, May 7, 1986, in Room 2128 Rayburn House Office Building at 2:00 p.m., to provide testimony to the Subcommittee on proposed legislation by the Federal regulatory agencies on emergency interstate acquisitions and related matters. More specifically, you are asked to testify on the Financial Institutions Emergency Acquisitions Amendments of 1986, the legislation proposed by the Federal regulatory agencies, and related matters.

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Sincerely,

Fernand J. St Germain
Chairman

FJStG:dTv

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April 30, 1986

Mr. John P. LaWare
Chairman-Elect
Association of Bank Holding Companies
730 Fifteenth Street, N.W.
Washington, D.C. 20005

Dear Mr. LaWare:

To assist this Subcommittee in the discharge of its responsibilities, you are requested to appear on Wednesday, May 7, 1986, in Room 2128 Rayburn House Office Building at 2:00 p.m., to provide testimony to the Subcommittee on proposed legislation by the Federal regulatory agencies on emergency interstate acquisitions. More specifically, you are asked to testify on the Financial Institutions Emergency Acquisitions Amendments of 1986, the legislation proposed by the Federal regulatory agencies, and related matters.

In accordance with Committee Rules, please deliver 175 copies of your prepared statement to Room B303 Rayburn House Office Building twenty-four hours in advance of your scheduled appearance. Your statement in its entirety will be included in the hearing record and, if delivered as requested, the statement will be made available to all Subcommittee Members in advance of the hearing. To provide all Subcommittee Members with sufficient time for questioning, the oral presentation of your prepared statement must be limited to ten minutes.

Sincerely,

Fernand J. St Germain
Chairman

FJStG:dTv

For release on delivery
10:00 a.m. EDT
May 7, 1986

Statement by

Paul A. Volcker

Chairman, Board of Governors of the Federal Reserve System

before the

Subcommittee on Financial Institutions Supervision,
Regulation and Insurance

of the

Committee on Banking, Finance and Urban Affairs

United States House of Representatives

May 7, 1986

I appreciate the opportunity to appear before this Committee today to discuss H.R. 4701, the Financial Institutions Emergency Acquisition Amendments of 1986. That legislation would make a number of important, but still limited, changes to the emergency provisions of the Garn-St Germain Depository Institutions Deregulation Act of 1982.

For your convenience, I have attached to my statement a short, and I hope readable, explanation of the bill. In this statement, I will focus on the principal issues involved -- the urgent need for action and the means of balancing the effectiveness of the proposed measures with appropriate protection of the interests of individual states.

The federal banking regulators -- the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency -- have reached a common judgment that the tools we have now for dealing with emergency situations involving failed or failing banks, including those within sizable bank holding companies, are not fully adequate. That judgment was reached in the light of strains and pressures involving banks in entire states or regions of the country that, as a result of the turmoil in energy and agricultural markets, face unusually severe economic conditions.

The existing provisions of the Garn-St Germain Act provide for emergency interstate acquisitions of failed banks of $500 million or more. Companion provisions for thrifts are decidedly more liberal both with respect to size and other criteria. Both provisions have been decidedly helpful in dealing with points of strain. But the banking structure and economic conditions in states heavily impacted by energy and agricultural problems strongly indicates that these authorities need to be strengthened to provide further assurance that problems -- actual and potential -- can be dealt with expeditiously and in a manner that will avoid a potentially contagious and debilitating loss of confidence within a state.

Specifically, we are concerned that in states where major banking organizations take the form of multi-bank holding companies, we have the tools to deal with banks within that holding company structure as a coherent whole rather than piece-by-piece. We also believe that, in some situations, we can act more expeditiously, with less risk to confidence and to other banks and with less cost to the FDIC insurance fund, if mergers with out-of-state institutions can be arranged before a bank actually fails or requires FDIC assistance.

Specifically, our strong recommendation is that the emergency acquisition powers be expanded to:

-- allow the interstate acquisition of a multi-bank holding company, or some or all of the banks within a holding company, when a significant portion of the banking assets of a holding company are impaired;

- reduce the bank asset size criterion for such interstate acquisitions to $250 million; and
- permit acquisition of failing as well as failed banks.

As members of this Committee are aware, a series of developments over this decade have adversely impacted banks and led to an unusual number of failures and more generalized strains. Disinflation, strong competition, and rapid changes in technology and market values have all played a part.

Taken as a whole, the banking system has responded constructively and resiliently to these pressures. There is, indeed, highly encouraging evidence that the system as a whole is now gaining strength. Specifically, for most banks, capital ratios have improved, earnings have increased and nonperforming assets have been reduced.

Nevertheless, in certain areas of the country, particularly where the economy is heavily dependent on agriculture and energy, these strains have been particularly great; and they have been aggravated by the sharp declines in energy, agricultural, and land prices. It is mainly in those areas where we face a compelling need to be in a position to deal with problem situations in a manner that will protect, rather than undermine, the strength and stability of the whole, including the vast majority of institutions that are fully capable of dealing with their own problems so long as general confidence is maintained.

Fortunately, the banks, large and small, that have served now-troubled energy and farming businesses have typically been in a relatively strong position. They have generally been characterized by historically high capital ratios, good earnings and ample liquidity. The fact that they have been able to draw on these strengths has provided a strong first line of defense in dealing with the present pressures. Ordinarily, that should be adequate.

Supplementing their natural strength, the Federal Reserve is, of course, fully prepared to provide assistance as part of the process of making necessary adjustments to pressures through its discount window on liquidity and changes in deposit flows. The availability of that kind of normal and appropriate assistance by the central bank, backstopping the resources and resourcefulness of the banking organizations themselves, should in itself enable solvent institutions to adjust to the situation.

However, there is one remaining potential danger to stability of banking in these heavily impacted areas -- and therefore to the entire economies of some states or regions.

The failure of a few important institutions -- unless handled expeditiously and effectively -- could raise unwarranted concerns about other, basically sound banks, and lead to a contagious and spreading loss of confidence. It is that contingency that we want to deal with and toward which the proposed legislation is directed. The powers sought are precautionary. Perhaps they will, in the end, not have to be used. I hope not. But it surely would be imprudent to rely on that hope. Recent earnings reports and other difficulties at a few institutions point to the danger. A prompt Congressional response will, in itself, provide a strong message of reassurance.

The case for this legislation is, I believe, widely acknowledged in the states most directly concerned. The debate, as I have observed it, revolves around specific provisions of the proposed legislation that balance the need for effective action against the concerns of states, and banks within a state, that they be able to preserve their ability to determine the future of their state's banking structure.

In striking that public policy balance, Congress has already concluded that interstate banking acquisitions are appropriate in certain emergency situations -- those involving failed banks of $500 million or larger. In addition, separate provisions of present law permit out-of-state acquisitions of both failed and failing mutual savings banks meeting the $500 million minimum asset size requirement and of savings and loan associations without any restrictions as to size. I would also point out that current provisions of law allow the interstate or interindustry acquisitions of thrift institutions "where severe financial conditions exist which threaten the stability of a significant number of insured institutions or of insured institutions possessing significant financial resources."

Those provisions of existing law were adopted because Congress recognized the need for constructive preventative action to assure that a serious particular situation did not spread and get worse. The same motivation lies behind the present proposal. While the present situation, in our judgment, requires some further extension of authority for interstate bank acquisitions, care has been taken to limit the scope of that authority and to provide a key role for state bank supervisors; in fact, the proposal before you dealing with commercial banks is substantially narrower than the interstate acquisition arrangements for savings and loan associations that are now contained in the Garn-St Germain Act.

Main Provisions of the Legislation

Perhaps the most important change in the proposed legislation would be to permit the federal supervisory authorities to deal with the units of a multi-bank holding company as an integrated whole. This is a recognition of simply reality.

A number of states, including typically those impacted by adverse energy and agricultural developments, have a banking structure built around multi-bank holding companies. Normally, units in those holding companies operate with a large degree of interdependence, under common management. However, the financial condition of different banking units within the holding company may vary substantially.

As things now stand, the law permits us to deal with those units of a holding company bank-by-bank. Some individual banks within the holding company may reach the $500 million size limit specified by the Garn-St Germain legislation, but many units may not, even though the holding company is one of the major institutions in the state. In some cases, none of the units meets the present size test, even if the holding company is far larger. Yet, the failure of one or two important banking units of a holding company would be bound to affect the viability of the whole.

The proposed legislation deals with this situation by enabling the sale of some or all the banks within a holding company, or the holding company itself, to an out-of-state institution when at least one-third of the entire assets of the holding company are in failed or failing units, provided those troubled units collectively reach an aggregate asset size of $250 million.

The second proposal is to modify the asset size limit for an individual bank or for banking units within a holding company by reducing it from $500 million to $250 million. That reduction is in recognition of the fact that deeply troubled institutions of that size, particularly when incorporated in a larger holding company, may not in current circumstances be salable within a state. Indeed, in some cases the holding company involved may be among the largest banking institutions in the state. In other instances, the larger institutions in the state, while able to cope effectively with their own problems, may not be in a position to raise the amount of capital, or to provide the liquidity or management resources necessary for a major acquisition.

The third area of change would be to permit the sale of "failing" -- defined as a bank in danger of closing -- as well as "failed" institutions. The definition of failing is meant to be rigorous -- that is to only include an institution that, while technically still solvent, has no reasonable prospect for either maintaining the liquidity or raising the capital necessary to maintain itself as an independent institution without prolonged federal assistance.

The purpose is straightforward. Such a "failing" institution may be more attractive to a potential buyer than one actually in receivership. The sale might be arranged without disturbance to confidence. There would be no cost, or a lesser cost, to the FDIC.

Limitations on the Use of the Emergency Powers

As I indicated earlier, the debate on the proposed legislation appears to center much less on questions of basic purpose and rationale -- which seems to be broadly accepted -- than on the appropriate specific limitations designed to protect the rights of states. This is a matter to which we have devoted considerable attention. We believe an appropriate balance has been struck consistent with the need for operational effectiveness. That need includes the simple fact that out-of-state purchasers of failed or very troubled institutions will simply not be available, or available only at very heavy cost to the FDIC, unless the acquired banks can be operated profitably in highly competitive markets.

Specifically:

-- Interstate acquisitions could only be made of banks (or units in a holding company system) when their operation as independent going concerns is no longer feasible.

-- Only the chartering authority -- state or federal as the case may be -- could initiate the process of interstate acquisition by determining the bank is failed or failing.

-- A minimum-size requirement has been maintained, although at a lower level.

-- An out-of-state acquirer of a bank or bank holding company would have its subsequent expansion rights limited to the three largest metropolitan areas or cities within a state.

-- In all cases, consultation with the relevant state bank supervisor would be required as to the possibility of an in-state solution. In the case of a failing or failed institution when the FDIC provides assistance, bidding priorities of present law favoring an in-state solution are retained, and an objection by a state supervisor could be overridden only by a unanimous vote of the FDIC board. In the case of a failing institution where no FDIC assistance is provided, no interstate acquisition could proceed if the supervisor certifies that there is a qualified in-state (or, when regional arrangements exist, regional) acquirer unless the Federal Reserve Board determines that the proposed in-state buyer does not in fact have adequate financial resources.

-- Finally, the authorities provided would end after five years.

We believe these safeguards are reasonable and workable, balancing the legitimate concerns of the states and competing banks with the broader interest in effective action to deal with emergency situations. They build upon concepts and tests in existing law, either for banks or thrifts. I am not aware of serious concerns that those existing authorities have been abused.

So far as the "failing bank" test is concerned, the intent is plainly only to deal with institutions that, in terms of strong liquidity pressures or impaired capital, would otherwise require large and prolonged official assistance if they are able to survive at all, with ancillary risks to the FDIC fund. In effect, the only alternative to merger would be to make them wards of the government for an indefinite period.

If such institutions were permitted actually to fail, it is widely accepted that they would be eligible for interstate acquisition. If that premise is accepted, the new provision for "failing" banks appears certainly reasonable as a matter of further protecting the FDIC fund and the stability of other banks that could be infected by a confidence crisis. Such a provision has already been adopted for thrifts. Strong preference would be provided for an in-state "solution," if in fact such a solution exists -- in fact that protection would be stronger than if, under current law, the banks failed and FDIC funds were more directly at risk.

In all cases of failing institutions, the board of directors or the stockholders of the institution itself would have to agree to a proposed merger. Some have questioned whether that might lead to a preference for an out-of-state partner willing to pay a higher price. That is one reason that the relevant state supervisor has been provided an effective veto power so long as there is, in fact, a feasible in-state partner ready, willing, and able to provide the necessary capital and other support.

Other questions have arisen with respect to the necessity to deal with the units of a multi-bank holding company as a whole. In some instances, dismemberment of a holding company may indeed be possible. But that will not always, or even typically, be consistent with achieving the purposes of the legislation -- speedy and orderly disposition of severe problems in a manner consistent with the stability of the banking system over an entire state or region.

Specifically, in cases where the failed or failing units within a holding company are key units of the system, piece-by-piece disposition would imply that sister banks are cut adrift, without the operating, accounting, and product delivery systems often centered in lead banks or the holding company itself. Units that might have been both solvent and liquid within the holding company structure would find their viability undermined if they had to maintain themselves as independent units -- units that would inevitably be tinged by their past association with a failed holding company organization. Nor are individual units of a holding company likely to be attractive to potential out-of-state acquirers. The associated uncertainties and potential disruptions are precisely what the bill is designed to avoid.

Conclusion

It is an unhappy fact that economic conditions in some states have brought strains and strong pressures on elements of the banking system in those areas. At the same time, there is every reason to believe those problems can be contained and diffused in a manner that will preserve and support the essential stability of the banking system, and thus avoid aggravating already difficult economic circumstances.

To assure that result, supervisory and regulatory agencies do need some limited additional authorities so that they can act with dispatch and at minimum cost, both in financial terms and in terms of maintaining confidence. Those authorities would be provided by H.R. 4701.

The bill has been carefully drafted to limit its scope totally to emergency situations for a limited period, at the same time reconciling conflicting demands of public policy. Congress in the past has acted with care and effectiveness in providing necessary authority to deal with problem areas in both the banking and thrift industries.

Failure to act now could only increase the risks that the ultimate costs would be far greater. We want to forestall a crisis, not to pick up the pieces after the damage has been done.

I strongly recommend you take the crucial further steps required by the present situation with the clear sense of urgency the situation demands.

Financial Institution Emergency Acquisition Amendments of 1986

I. General Provisions

The Federal banking regulators have requested that the Garn-St Germain Act of 1982--which permits acquisition across state lines of failed banks having assets of $500 million or more--be changed and augmented in the following respects:

-- That the size threshold for interstate emergency acquisitions be lowered from $500 million to $250 million.

-- That an interstate rescue be permitted when a bank is "failing"--in danger of closing--rather than actually closed.

-- That the interstate acquisition of a bank holding company or of some or all of the banks in a bank holding company be permitted if the assets of the banks in danger of closing in the holding company total $250 million or more and constitute at least 33 percent of the banking assets of the holding company.

-- That the out-of-state banking company be permitted to expand its operations to the three largest cities or metropolitan areas in the state of the acquired banking institution.

II. The In Danger of Closing Test

The bill provides a qualitative test to determine when an interstate acquisition may be made of a bank that is "in danger of closing."

-- A bank is defined as "in danger of closing" (1) if it is not likely to be able to meet the demands of its depositors or pay its obligations and there is no reasonable prospect for it to do so without federal assistance; or (2) if it has incurred or is likely to incur losses that will deplete all or substantially all of its capital and there is no reasonable prospect of replenishment of its capital without federal assistance; or (3) if there are other grounds for closing the bank under state law.

-- The appropriate federal or state chartering authority must certify in writing that a bank is "in danger of closing." The appropriate chartering authority is the State bank supervisor in the case of state chartered banks and the Comptroller of the Currency in the case of federally chartered banks.

III. State Banking Structure Protections

Careful protections to preserve the opportunity of an in-state solution are included in the legislation. The particular safeguards depend on whether or not the FDIC provides financial assistance in connection with the interstate acquisition.

A. Unassisted Acquisitions

In the case of acquisitions of failing institutions that take place without FDIC financial assistance:

-- Before a failing institution can enter into discussions with an out-of-state company, the State bank supervisor must be notified and the company must attempt to arrange an acquisition within the state or within its region if the state is part of a regional compact.

-- If in-state and regional efforts are unsuccessful, any application for an out-of-state acquisition must describe the efforts made to arrange an in-state or regional acquisition and the reasons for rejection of any in-state or regional proposal.

-- If an application is submitted for an out-of-state acquisition, the Federal Reserve must consult the State bank supervisor.

-- The State bank supervisor must be given a reasonable opportunity to object to approval of the application--in no event less than 48 hours.

-- The Federal Reserve cannot approve the application if the State supervisor certifies that an in-state or regional applicant has offered to acquire the institution and has the financial and managerial resources to be likely to be able to secure regulatory approval.

-- The in-state or regional applicant does not have to match or exceed the out-of-state bid. The in-state or regional offer need only be sufficient to recapitalize the failing banks and not involve FDIC assistance.

-- Only if the Federal Reserve determines that the in-state or regional party certified by the State supervisor does not have the financial resources to recapitalize the failing institution, can the Federal Reserve approve an out-of-state acquisition.

-- The acquisition must be approved by the board of directors of the bank that is in danger of closing or its holding company.

B. FDIC Assisted Acquisitions

In the case of acquisitions of failed banks or those that take place _with_ FDIC financial assistance, the following safeguards are included in present law or in the proposed legislation:

-- The FDIC may assist a merger or acquisition across state lines only where the board of directors of a failing bank requests that the FDIC do so.

-- If the best offer--in terms of lowest cost to the FDIC--is made by an out-of-state company, then the FDIC shall permit any in-state or other bidder whose bid was within 15 percent or $15 million (whichever is less) of the best offer, to submit a new bid. In making a final determination on bids, the FDIC is directed to give priority to an institution from the same state. In considering offers from different states, the FDIC is required to give priority to offers from adjoining states.

-- The FDIC must consult with the State bank supervisor before the FDIC can assist an interstate merger or acquisition.

-- The State bank supervisor must be given a reasonable opportunity to object to the interstate merger or acquisition--in no event less than 48 hours.

-- If the State supervisor objects to the interstate acquisition, the FDIC may go ahead with the transaction only by a unanimous vote of the FDIC Board of Directors, and a written certification of its decision must be provided to the State supervisor.

IV. Other Provisions

-- The bill specifically prohibits providing financial assistance by the FDIC to any nonbanking subsidiary of a holding company in an assisted interstate transaction.

-- If the FDIC provides financial assistance to a failing bank with total assets of $250 million or more and the bank is not acquired by an out-of-state company at the time the assistance is given, the bank and its holding company affiliates shall remain eligible to be acquired by an out-of-state bank or holding company as long as the assistance is outstanding.

-- The Federal Reserve would be authorized to waive notice and hearing requirements in approving emergency acquisitions.

-- The bill extends for five years the emergency provisions of Title I of the Garn-St Germain Act. Those provisions and the provisions added by this legislation would sunset in five years.

FERNAND J. ST GERMAIN, RHODE ISLAND, CHAIRMAN

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May 12, 1986

Honorable Paul A. Volcker
Chairman, Board of Governors
Federal Reserve System
20th and Constitution Avenue, N.W.
Washington, D.C. 20551

Dear Chairman Volcker:

Thank you for your testimony on May 7, 1986, on H.R. 4701, the "Financial Institutions Emergency Acquisitions Amendments of 1986". The Subcommittee would appreciate written answers to the following questions on issues of interest raised during those hearings.

1. In my letter to you of last week I asked if it would be possible for a nonfinancial institution to avail itself of any of the provisions of H.R. 4701 in order to acquire an insured bank. You answered:

"H.R. 4701 does not alter in any way the provisions of section 4 of the Bank Holding Company Act that prohibit a nonbanking company from acquiring a bank. Thus, a nonfinancial institution may not acquire an insured bank under the provisions of H.R. 4701. H.R. 4701 permits the interstate acquisition of a failed or failing bank only by a bank holding company."

I posed the same question to the Federal Deposit Insurance Corporation, and Chairman Seidman answered:

"It is possible for a nonfinancial institution to acquire an insured bank under existing law and it would remain possible under H.R. 4701. This bill neither authorizes nor prohibits such a transaction."

Finally, Comptroller of the Currency, Robert Clarke answered the same question as follows:

"H.R. 4701 does not address acquisitions by nonfinancial institutions. The purpose of this legislation is to remove those geographic restraints, such as the Douglas Amendment, that currently prevent out-of-state banks and bank holding companies from acquiring a depository institution that is in danger of closing."

Please explain the difference between your answer and that of the Federal Deposit Insurance Corporation and the Comptroller of the Currency.

2. In order to clarify certain issues regarding intrastate and interstate expansion rights under H.R. 4701 which were raised during the Subcommittee's hearing on Wednesday, May 7, 1986, please answer the following:

a. Would H.R. 4701 permit an in-state bank or its bank affiliates acquired by an out-of-state institution to expand by branching to the same extent permitted by state law for other in-state banks?

b. Would H.R. 4701 permit an out-of-state bank holding company that has acquired an in-state bank or bank holding company to expand only by purchasing another in-state bank located in one of the three largest metropolitan areas in that state? If so, how long would this limitation remain in effect?

c. Would H.R. 4701 permit an in-state bank holding company acquired by an out-of-state institution to expand by acquisition into another state if that other state's "compact" statute permitted "leapfrogging"?

3. During the Subcommittee's hearings on H.R. 4701, the issue of shareholder's rights in those insured banks "in danger of closing", and the rights of shareholders in the parent bank holding companies and affiliates was raised. The question arose as to whether under H.R. 4701, the shareholders of "failing" banks (and shareholders in their parent bank holding companies and affiliates) should benefit through "windfall" profits from such interstate transactions.

Please explain and comment upon the rights of these shareholders under transactions anticipated under H.R. 4701, and whether such shareholders should be allowed to profit from such transactions.

4. The following questions are posed by Congressman Charles Schumer.

a. The Bank Holding Company Act requires the Fed — in non-emergency interstate acquisitions — to consider the extent to which a proposed acquisition will meet the convenience and needs of the local community. As you know, H.R. 2707 contained a strong community benefits test for institutions wishing to expand interstate. Since emergency acquisitions could be the linchpin of a tremendous expansion of interstate banking, what role do you think this or any other public benefits test should play both in and out of the emergency context? For example, when a bank that enters a state in an emergency acquisition expands to the three largest metropolitan areas, should a more stringent test be applied? Should a more stringent test be applied when it expands into other states which have entered a regional compact with the home state of the acquired institution?

b. If you believe that no changes are required in the statute, do you agree that a greater level of scrutiny should be given to this section of an application to expand interstate, and a higher standard of "convenience and needs" be applied?

c. I have just received a survey of the laws of 26 of the 27 states which allow some form of interstate banking (enclosed). Of these states, only three have strong community benefits requirements, while the others have either no such provision or one that tracks the language of federal law. (The 27th state, Minnesota, recently enacted an interstate bill with a strong community benefits provision). There are several indications that some states have not enacted stronger community benefits provisions due to a competition in laxity with other states. In your opinion, does this add to the need for a federal standard on community benefits for interstate expansion generally?

Again, I appreciate your testimony and request that answers to the above questions be provided by May 22, 1986 in order to complete the hearing record.

Sincerely,

Fernand J. St Germain
Chairman

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BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

PAUL A. VOLCKER
CHAIRMAN

May 20, 1986

RECEIVED
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Banking, Finance & Urban Affairs Committee

The Honorable Fernand J. St Germain
Chairman
Subcommittee on Financial Institutions
Supervision, Regulation, and Insurance
Committee on Banking, Finance, and
Urban Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman St Germain:

Your letter of May 12, 1986 requests answers to a number of questions on issues raised during my testimony on May 7, 1986 on H.R. 4701, the Financial Institutions Emergency Acquisition Amendments of 1986. Some of the matters referred to in your letter were posed as specific questions during the hearing, and in order to complete the record as quickly as possible, I took the initiative of providing answers to them in my letter to you of May 12. That letter covers the issues referred to in question 2 (a), (b), and (c) concerning the expansion rights of out-of-state acquirors and the first part of question 3 concerning shareholders' rights in banks that are "in danger of closing." For your convenience, I am enclosing a copy of my letter of May 12.

Acquisitions by Nondepositories

Your first question requests an explanation in the different answers given by myself, Chairman Seidman and Comptroller Clarke to the question on whether it is possible for a nonfinancial institution to avail itself of any of the provisions of H.R. 4701 in order to acquire an insured bank. In my answer, I emphasized the fact that the only impact of H.R. 4701 on this question is that it lifts the Douglas Amendment restrictions on interstate acquisitions in certain circumstances. Since the Douglas Amendment limitations on interstate acquisitions are only applicable to bank holding companies, H.R. 4701 does not in any way permit or allow nonfinancial institutions to acquire insured banks.

The replies of my colleagues answer a different question and they are consistent with my reply as to the effect of H.R. 4701. All agree that H.R. 4701 does not in any way assist a nondepository institution in acquiring an insured bank. My colleagues point out that H.R. 4701 does nothing to change existing law which does not prevent a nondepository institution from acquiring an insured bank. Such an insured bank would, however, under existing law, have to be operated as a nonbank bank.

In that connection, the commercial advantage or feasibility of converting the commercial banks that would be covered by H.R. 4701 into nonbank banks by either divesting commercial loans or demand deposits without compromising the commercial viability of the bank may be questionable. Even more questionable, in fact a demonstration of the reductio ad absurdum of the nonbank bank concept, would be the transfer of the acquired bank's commercial loan portfolios to a commercial lending affiliate of the nonbank buyer. It is for this kind of reason that I stressed in response to your question during my testimony my long-held and firm view that the Congress should take prompt action to close the nonbank bank loophole.

Shareholder Benefits

The second part of your third question asks whether shareholders of a bank in danger of closing should be allowed to profit from an interstate transaction. As I stressed in my testimony, we have tried to strike an appropriate balance between the need to deal effectively with urgent banking problems in order to avoid disruption of services and potential ripple effects elsewhere and the desirability of maintaining the policy of state determination of local banking structure.

In striking this balance, in the case of unassisted transactions we have put great emphasis on an in-state solution, requiring that the bank in danger of closing explore an in-state acquisition before going out-of-state, and that the state supervisor be immediately informed of the initiation of negotiations with an out-of-state buyer. Moreover, we have provided that state supervisors have the effective ability to veto an out-of-state acquisition so long as there is any in-state buyer prepared to, and capable of, capitalizing and managing the bank in danger of closing. The only basis for reversing the state supervisor's decision is a finding by the Board that the in-state potential buyer is not capable of meeting these minimum requirements.

Thus, an out-of-state solution may go forward only where there is no feasible in-state solution. With these very substantial safeguards, it would not seem unreasonable to permit an out-of-state acquisition in those limited circumstances where this authority may be used. In cases where FDIC assistance has been provided a failing bank, I would expect any so-called premium arising out of the franchise value to an out-of-state buyer would be used first to protect against any potential loss to the FDIC, and only if there were any surplus, or in a case where FDIC assistance would not be required, would the shareholders benefit. Thus, the shareholders would benefit only in an unusual case and only after careful safeguards, to protect the public interest, have been invoked.

More Stringent Local Service Requirements

Your fourth question, posed by Congressman Charles Schumer, concerns the possible application of a more stringent public benefits test for meeting local service requirements. His question seems to be premised on his assumption that the emergency acquisition provisions of H.R. 4701 "could be the linchpin of a tremendous expansion of interstate banking."

I do not foresee widespread use of the interstate acquisition provisions of this bill. They are an essential backstop for dealing with potentially serious problem situations, and a way of preventing the spread of these problems within a community or region. Thus, the bill will be useful in helping to create an atmosphere of confidence, even if the interstate provisions are used little, if at all.

If an interstate acquisition does take place, it will be essentially because that approach proved to be necessary to meet the convenience and needs of the community and the state. I do not believe that the goals of the bill would be furthered by placing a new and more stringent requirement with respect to local services in an emergency situation. So far as subsequent acquisitions are concerned, provisions of present law already require the Board to assess the buyer's record of meeting the credit needs of its entire community, including low and moderate income neighborhoods. The Board would, of course, take these factors into account in considering any application arising as a result of H.R. 4701. Any revision of these standards or changes in the circumstances of application should come only in the context of a careful and separate evaluation of the need for them.

I would be pleased to provide any further assistance the Subcommittee may need in its consideration of H.R. 4701.

Sincerely,

Paul A Volcker

Enclosure

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

PAUL A. VOLCKER
CHAIRMAN

May 12, 1986

The Honorable Fernand J. St Germain
Chairman
Subcommittee on Financial Institutions
  Supervision, Regulation, and Insurance
Committee on Banking, Finance, and
  Urban Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman St Germain:

This is in response to questions raised at the hearing on H.R. 4701 concerning the scope of in-state expansion rights allowed an out-of-state acquiror as well as the rights of dissenting shareholders.

First, a question was raised whether, if the state in which an acquired bank is located had enacted regional interstate banking legislation, the out-of-state bank holding company could acquire banks in other states in the region. If the acquiring bank holding company is within the region then the proposed bill would not limit subsequent expansion. If, on the other hand, the out-of-state bank holding company is located in a state that is not within the region, and it acquires a bank in a state that is in a regional compact, the out-of-state holding company could acquire additional banks in any states in the region, but only if such additional regional acquisitions were permitted by the other states participating in the regional arrangement. However, most regional arrangements have provisions preventing such so-called "leap frogging."

In this connection I would also like to note, in response to a question posed by Congressman Barnard, that the bill does not affect in any way the provisions of existing law that recognize that a failed bank acquired by an out-of-state banking organization may branch within the state to the same extent as national banks in the state. Following this precedent, a bank "in danger of closing" that is acquired by an out-of-state organization under H.R. 4701 could continue to branch to the same extent as any national bank in the state, as under current law.

You also asked, Mr. Chairman, whether the authorization for additional bank acquisitions in the three largest metropolitan areas in a state would terminate when the provisions of the bill terminate under its sunset provisions. The bill, as currently drafted, merely extends the expiration date of the authorities contained in the bill from July 15, 1986 to April 15, 1991. Once the bill expires, authorization for additional acquisitions would consequently expire and an out-of-state holding company that had previously made an acquisition would thereafter be prohibited from acquiring additional banks in the three largest metropolitan areas, or anywhere else in the state, unless, of course, the state had enacted legislation in the meantime authorizing additional acquisitions.

The sunset provisions should be amended to make it clear that this limited three cities-metropolitan area expansion provision of the Act should not be subject to the sunset provision. It would seem fair and reasonable to provide instead that an out-of-state holding company that acquires a failed or failing bank should be permitted to continue to have the authority to acquire banks in the three largest metropolitan areas, but only in those areas, even after the other provisions of the bill terminate.

Finally, toward the conclusion of the hearing you asked about the rights of shareholders in a transaction authorized under the bill. As I indicated, under H.R. 4701 no acquisition of a bank in danger of closing may be permitted without the specific approval of the bank's board of directors. In addition, under state corporate law which governs these matters, the approval of shareholders would generally be required for a merger or sale of the banking assets of a bank holding company. Under state law, dissenting shareholders may also have certain appraisal rights with respect to their holdings.

You specifically asked about shareholders' rights to prevent a sale. In this case final action would, in almost all cases, be taken by the Board, which action would be subject to judicial review by an aggrieved person, including an aggrieved shareholder. The test that the court would be required to apply is whether the Board's findings of fact are supported by substantial evidence. I am advised that shareholders may also bring a derivative action to prevent the sale, but, in accordance with generally applicable principles of corporate democracy, where the majority has acted reasonably and in good faith in the best interest of the corporation, it is unlikely the transaction could be enjoined or set aside by the courts.

I would be pleased to provide any further assistance the Subcommittee may need in its consideration of H.R. 4701.

Sincerely,

Paul A Volcker

Statement of

John R. Petty
Chairman
Marine Midland Banks, Inc.

on

H.R. 4701, The Financial Institutions Emergency Acquisitions Amendments of 1986

before the

Subcommittee on Financial Institutions Supervision, Regulation and Insurance
Committee on Banking, Finance and Urban Affairs

U.S. House of Representatives
Washington, D.C.

May 7, 1986

Mr. Chairman and Members of the Subcommittee, my name is John R. Petty, and I am appearing today in my capacity as Chairman of Marine Midland Banks, Inc., a bank holding company headquartered in Buffalo New York with total assets of $24 billion, and a broad retail branch system throughout New York State. I appreciate the opportunity to testify on H.R. 4701, the "Financial Institutions Emergency Acquisitions Amendments of 1986", legislation of critical importance to the present depository system and its stability.

I welcome and support this legislation and applaud the Federal financial regulatory agencies for its introduction and this Committee for its prompt consideration. It is very significant that the Federal Reserve, FDIC and Comptroller have joined together in seeking immediate Congressional approval for the provisions in H.R. 4701 to assist in managing selected problems within our industry. Such unanimity demands that those proposals be given serious consideration. Furthermore, I cannot disagree with the regulators' assessment of the difficulties facing some financial institutions in some states. It is evident that some institutions deeply involved with agriculture, energy loans, and real estate are experiencing increasing difficulty with their liquidity.

A bank loans to the environment it serves, particularly through its direct offices. If that area is concentrated in farming, energy, and real estate - so is the bank's portfolio. Laws which restrict a bank's direct operations foster loan concentrations. This had led to problems today.

In the current situation particularly, many troubled banks would simply be better off if they were less geographically restricted leading to a more diversified, stronger loan portfolio and a far broader and more stable deposit base. Experience again demonstrates a broad deposit base and diversified loan portfolio strengthens an institution immeasurably - better able to adjust to changing conditions.

Five years ago, this Committee considered the original regulators' bill and encountered concerns about the McFadden Act, the Douglas Amendment, and the nation's dual banking system. Fears were expressed then that the legislation was tilted toward money center institutions. Such fears have now been reiterated. Our experience over the last five years, however, has shown that such concerns and fears were --and are-- unfounded.

The emergency acquisition authority has done little to affect the nation's interstate banking statutes. The question: Has it done enough to address the broader national interest in a safe and sound financial system? The regulators have exercised restraint in applying the existing emergency savings and loan associations acquisitions provisions and in applying similar provisions for the mutual savings banks (where the regulators currently have the ability to arrange an acquisition when an institution is "in danger of closing").

Indeed, I think it is fair to characterize the changes proposed by the regulators in H.R. 4701 as only modest. One can easily see where the agencies might have gone much further in their proposals. As an example, the provision that an acquiring out-of-state bank does not have the same ability to branch and expand to the same extent as in-state banks. Why should any new investor want to be restricted to the same market that got his predecessor in trouble?

Clearly, the proposed bill does not establish any new policy on interstate banking. That is driven by other dynamics. Over 30 states in the Union have already - to one extent or another - recognized the public benefits served by broader national banking. That is not the subject of my testimony or this legislation.

Of vital concern to this committee and the subject of my testimony is the need to help find the means to attract private capital to those institutions in need. That can only be accomplished by making such investments attractive to investors with other opportunities in the marketplace. H.R. 4701 makes a move in that direction, but it is not a giant step. Hopefully the bill potentially would diminish the risk to the insurance funds by attracting new capital and avoiding intervention by the regulators. The proposal is helpful I suppose, but I am not convinced the changes will create "significant" additional flows of capital in view of all the caveats.

Limiting the market to which shareholders can sell, or the way they can sell, may serve someone's purpose but it also limits the possible buyers and the benefits to the public at large.

Changes are needed to broaden the benefits of the bill; for example, (1) the agencies could have proposed the complete elimination of the size threshold requirement for bank acquisitions. Instead they proposed only a 50-percent reduction in the requirement. (2) They could have proposed the elimination or relaxation of the bidding procedures which favor local bidders. Instead they maintain the complicated priority scheme contained in existing law; a priority scheme which during the Ohio thrift crisis worked against a more timely solution. (3) Finally, - and quite significantly - they could have proposed that once a bank holding company acquired another institution in a state, that bank holding company would be able to operate as any other bank holding company. Instead they limit the institution to only the three largest metropolitan areas in that state. This tends to create, however, a type of second class banking citizen depriving the public and diminishing the advantages a broad, efficient consumer and small business driven bank with a full range of efficient services could bring to a new market - hardly an advantage to the community that finds itself in need of a larger, more diverse financial institution.

Therefore, the agencies in establishing a unified position may have erred on the side of the lowest common denominator in fashioning their bill. Relatively few banks have taken advantage of the emergency acquisition authority contained in existing law because that law is so constraining.

As I have pointed out, there is the opportunity to make this a useful piece of legislation where enhanced powers and regulatory discretion can better serve a clear national interest.

In summary, this committee is considering good public policy legislation which could help the industry somewhat by opening the door to interstate investments on a restricted basis. A scooter or perhaps even a moped of investment will be facilitated by these changes, a slight step-up from the foot traffic so far. Modifications to cause enough traffic for Fords and Plymouths is recommended. The Mack Truck drivers won't even bother to start their engines.

TESTIMONY

OF

HANS H. ANGERMUELLER

REGARDING

FINANCIAL INSTITUTIONS EMERGENCY ACQUISITIONS AMENDMENTS OF 1986 (H.R. 4701)

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE
OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

MAY 7, 1986

My name is Hans H. Angermueller. I am Vice Chairman of Citicorp and Citibank, N.A., its principal banking subsidiary. I appreciate this opportunity to comment upon the Financial Institutions Emergency Acquisitions Amendments of 1986 as proposed by the Federal regulatory agencies. For convenience, I shall refer to the proposed legislation as the "Regulators' Bill".

In order that the Committee may understand the reason for my later comments on the Regulators' Bill, I think it might be helpful to make a few brief and general comments on the rapidly changing environment in the financial services business.

Over the years, a variety of laws, rules and regulations have taken effect that severely constrain where U.S. banks can do business and how U.S. banks can do business. These laws, of course, include the McFadden Act, the Douglas Amendment, the Bank Holding Company Act and the Glass-Steagall Act. These were, for the most part, enacted over half a century ago when the financial services marketplace was far different than today's.

During the last twenty years or so, a number of fundamental and essentially uncontrollable forces are changing the nature of the banking business, as well as other traditional financial services businesses. In my opinion, the most important of these forces are:

(i) Technology that has, for all practical purposes, eliminated traditional impediments in the form of volume, distance, time and cost in the processing, storage and transmission of financial data and information.

(ii) Savings that are now flowing into, and are managed by, institutions other than banks and thrifts in ever larger quantities. Today institutional money managers in the U.S. manage over $2 trillion of pooled investments, a sum just about equal to the total assets of all U.S. commercial banks.

(iii) The attitudes of traditional bank customers, both individuals and institutions, that are changing. These customers are willing to deal with institutions other than banks and thrifts in the management of their financial affairs.

(iv) The new competitors to banks and thrifts that are appearing. They offer a wide variety of complementary and efficient financial services to the new breed of customers, both individual and institutional, at a variety of locations and using the latest technology.

(v) Finally, the capital markets of the world that are becoming national and international in nature so that savings generated in one market are increasingly being made available for investment in other markets.

These forces are crashing into the traditional barriers that segment the U.S. financial services industry. Banks, thrifts, securities firms, insurance companies, finance companies, commercial enterprises and consumers are all rethinking their traditional ways of doing their financial business.

The Regulators' Bill addresses a specific short term aspect of this larger picture -- namely, what can the private sector do about some of the banks and thrifts that have encountered financial difficulties in this changing environment?

If the goal is to reduce the public sector costs by increasing the demand from private sector acquirors for the charters of troubled banks and thrifts, then I do not believe the Regulators' Bill in its present form will accomplish that goal. It creates no incentives, and instead imposes too many impediments, to really increase demand for the charters of failed banks and thrifts.

Let me elaborate.

Before the Garn-St Germain Act was passed, Federal thrift industry regulators had essentially full authority to determine who could acquire a failing thrift institution and under what terms. The Act, however, restricted that authority and created a variety of constraints if a failing thrift was to be acquired by an out-of-state bank or bank holding company.

Nevertheless, as a number of large thrifts located outside New York began to encounter financial difficulties, Citicorp saw an opportunity to enter new markets despite existing interstate banking restrictions. Accordingly, Citicorp in 1982 and 1984 acquired failing thrifts in California, Florida and Illinois, despite the constraints of the Garn-St Germain Act, and certain non-statutory constraints (so-called "tandem restrictions") imposed by the Federal Reserve Board as a matter of policy.

While we were delighted to enter into and serve these new markets, I must confess that we perhaps underestimated the difficulties of making the acquired failing institutions profitable in the face of the legal and regulatory constraints that were imposed on us. Today, we would be more cautious in bidding for such institutions.

Moreover, since the original concepts of the Garn-St Germain Act were introduced in 1981, several developments have occurred. Many individual states have relaxed their interstate banking barriers and many others are considering doing the same. These relaxations are taking a variety of forms (regional, regional with a national trigger, national, full scope and/or limited scope). All these relaxations, however, seem to be motivated by the ideas that more flexibility will help the banking industry and more competition will better serve the public.

As this state-motivated breaking down of interstate barriers is continuing, more and more opportunities are developing for banks or bank holding companies situated in one state to establish or acquire financially healthy banks or bank holding companies in other states. In other words, the interstate market for healthy banks is moving from a seller's market to a buyer's. Banks in states with regional compacts still have healthy targets within those regions and may well be reluctant to bid for failed institutions outside those regions.

Even New York banks, which have been severely discriminated against by regional compacts, have interesting opportunities to expand outside New York.

In this context, the Regulators' Bill, to be effective, must be changed to eliminate those provisions which would deter an out-of-state bank or bank holding company from bidding to acquire a troubled bank that is in danger of closing. Specifically, I would suggest that:

-- The bill be amended to permit a successful out-of-state bank holding company bidder to expand within the state and region to the same extent that an in-state bank holding company. Why would an out-of-state buyer want an insolvent bank that won't even have expansion powers equal to the competition's?

-- The bill be amended by permitting non-binding discussions with potential out-of-state bank holding company bidders but requiring prior notification to state regulators before entering into binding commitments. Isn't it better to generate the broadest possible interest to bid?

Indeed, in light of the changes that are occurring in the financial services industry generally and in the area of interstate banking in particular, I would respectfully suggest that this Committee might also consider eliminating or simplifying those existing emergency thrift and bank acquisition provisions in the Garn-St Germain Act which deal with (i) multi-level bidding procedure priorities; (ii) preferences for adjoining state bidders; and (iii) limitations after acquisition on intra-state branching or principal office location.

Our experience shows that making prudent, competitive bids for failing depository institutions, whether they be banks or thrifts, is an expensive and time-consuming process. Experts in accounting, credit, banking, treasury, audit and law, are involved -- sometimes for weeks at a time. After a full analysis is completed, senior management must spend further time reviewing, approving and finally making the bid. "So why bother?" is a common reaction to an invitation to bid where even a carefully prepared and otherwise winning bid can be beaten by a lower bid made by an in-state institution.

Similarly, I would respectfully suggest that this Committee communicate to the Federal Reserve Board its encouragement to the Board to relax or eliminate existing and prospective Tandem Restrictions in connection with emergency thrift acquisitions.

In fact, looking at the practical realities, the Committee might even go so far as to give consideration not only to eliminating competitive disadvantages to successful out-of-state bidders as I have described, but enhancing the attractiveness of making a bid. For example, a successful out-of-state bidder might be permitted to acquire a friendly, financially sound institution of similar character and size for each troubled institution acquired in the state or be allowed to increase the geographic scope of the acquired, troubled institution's business. A somewhat similar approach to geographic expansion is reflected in a recently finalized rule of the FHLBB relating to regional acquisitions among thrifts.

In sum, what I am suggesting is for the Committee to respond to the changing character of the financial services market by inducing, rather than deterring, out-of-state institutions to bid in fair competition with in-state institutions.

Such a path, I believe, is essential if the Regulators' Bill is to result in less burden to the federal insurance funds, a healthier banking industry, and a better served public.

Thank you.

Statement of
John P. LaWare
Chairman-Elect
Association of Bank Holding Companies
before
Subcommittee on Financial Institutions
Supervision, Regulation and Insurance
Committee on Banking, Finance and Urban Affairs
House of Representatives
Washington, D.C.
May 7, 1986

Oral Statement

Mr. Chairman and members of the Subcommittee, I am John P. LaWare, Chairman of the Board and Chief Executive Officer of Shawmut Corporation, a regional bank holding company with headquarters in Boston, Massachusetts. I might add that Shawmut celebrated its 150th anniversary yesterday.

I am appearing before you today in my capacity as Chairman-Elect of the Association of Bank Holding Companies. Accompanying me is John S. Rippey, Senior Vice President of the Association.

The Association of Bank Holding Companies is composed of approximately 155 member companies ranging in size from Mid-Continental Bancorporation, Inc., Milwaukee, Wisconsin, with assets of $165 million, to Citicorp and BankAmerica Corporation. Shawmut, with assets of almost $8 billion, is typical of the regional bank holding companies that make up our membership. Shawmut by the way is one of the 13 charter members of this Association, which was organized in 1958.

We appreciate the opportunity to comment on H.R. 4701, the "Financial Institutions Emergency Acquisition Amendments of 1986." The amendments extend and modify the authority Congress granted to federal banking agencies in 1982 to arrange interstate acquisitions and mergers of failed banks and savings and loan associations, and failing mutual savings banks. The effect of the amendments, as we see it, is to increase the incentive for out-of-state bank holding companies to make bids on failing banks in certain states by allowing acquisition of the parent holding company as well as individual banks.

Our Association has always supported requests from the banking agencies for additional regulatory and supervisory powers when we viewed them as necessary for the agencies to carry out their responsibilities under the law. The Association strongly supported the first initiative regarding troubled institutions when it was submitted to Congress by the Federal Reserve Board in 1975, and we support the proposal before the Subcommittee today. We believe Congress should promptly grant the regulators' request so that banks and bank holding companies encountering financial difficulties can be provided assistance in the most expeditious way possible.

In drafting H.R. 4701, the supervisory agencies sought to strike a balance between the changes in the law needed to accommodate the problems encountered by a number of troubled banks and bank holding companies and the inevitable objections that would be raised against the acquisition even of failing institutions across state lines. On the one hand, we support the proposed changes. On the other hand, we feel that the restrictions in the bill are counter-productive, bearing in mind that the legislation should enhance, not detract from, the attractiveness of what are, at best, problem-filled acquisition opportunities.

For example, the bill lowers the threshold measure for eligibility of banks from $500 million to $250 million, and permits a bank holding company to be acquired by an out-of-state purchaser--but only if the in-state company has a bank subsidiary (or subsidiaries) with assets of $250 million or more and is in danger of being closed, and these troubled assets must represent 33% or more of the holding company's banking assets. Furthermore, the out-of-state acquirer is limited, after everything else, to making additional acquisitions only in the three largest metropolitan areas in the home state of the acquired institution. Thus, the rescuer is expected to operate at a competitive disadvantage once the rescue is accomplished. This is hardly an inducement.

With regard to the percentage restriction on the impaired assets of a bank holding company, it is certainly not unreasonable to assume that a company with 33% of its banking assets impaired should constitute a basis for action by the regulators, including the invocation of the interstate bidding procedures. However, is it not an unreasonable presumption that this would be the only situation warranting such action? How can we be sure that 33% is the correct number? It would be preferable, in my view, to allow the regulators the flexibility to use their judgment in problem situations that have not reached the 33% threshhold.

Out-of-state bank holding companies acquiring a failing institution should be accorded the same geographic expansion rights as are available to in-state institutions. Geographic diversification is generally regarded as a strength. To deny geographic diversification opportunities to a rescued, but perhaps still troubled, bank holding company would be counter-productive, and would make it much more difficult to restore the patient to health. We believe therefore that the metropolitan area limit should be eliminated.

It is not possible to quantify the effects such limitations may have on restricting the number of prospective bidders. Of course, each situation is different. We do know that the constraints in the "Garn-St Germain Act" have resulted in relatively few occasions when a formal bidding process has occurred involving a failed bank. In four years, in fact, the formal bidding process has been completed in just one instance. Only time will tell what effect the new restrictions in the regulators' bill would have, but they certainly constitute disincentives in a bill whose purpose is to attract healthy institutions to purchase and rehabilitate failing ones.

Furthermore, let us keep in mind that the purpose of the bill is to strengthen the ability of the regulators to deal with problem institutions in the relatively rare cases where purchasers cannot be found under present laws. H.R. 4701 is not a nationwide interstate banking bill, any more than was the 1982 "Garn-St Germain Act." Of course, there is a nationwide interstate banking bill--H.R. 2707, approved by the full Committee last June. It is important that the two not be confused; one is not a substitute for the other.

Finally, the Subcommittee is being urged to adopt extraneous amendments that would render the bill virtually unworkable. For example, it has been proposed that concentration provisions be added to H.R. 4701, even though H.R. 2707 specifically exempted emergency situations from the concentration standards in that bill. Similarly, others have suggested that the Community Reinvestment Act revisions in H.R. 2707 be added, even though that bill excluded emergency situations from the CRA amendments as well. The preservation of a failing institution as an alternative banking option is perhaps the finest service to the community that can be provided by an out-of-state acquirer, and the attainment of this goal should not be impeded by the addition of these extraneous amendments.

Attached to my prepared statement is a brief analysis of the concentration and community reinvestment standards that appear in H.R. 2707, which I am including for the information of the subcommittee. This concludes my oral presentation, and I will be happy to respond to questions.

* * *

Background

Several of the companies which were charter members of the Association of Bank Holding Companies in 1958 owned banks in more than one state. As a result, this Association has always viewed ownership of banks or bank holding companies across state lines favorably. Other groups have viewed the same situation with alarm. When we review proposals such as H.R. 4701 from our perspective, we see nothing objectionable. In fact, from our standpoint, H.R. 4701's basic thrust flows naturally from the authority Congress gave the agencies in 1982, and is a sensible extension of public policy. It is only an incremental step, giving the regulators greater flexibility in handling problem situations; it is by no means watershed legislation.

It may be instructive to recall a bit of not-so-ancient history. This Association appeared before the Senate Banking Committee's Subcommittee on Financial Institutions in 1975 in support of S. 890, a bill prepared by the Federal Reserve Board. The Board had proposed that Congress allow interstate acquisition of failing banks and bank holding companies and shorten certain statutory waiting periods in emergency situations. Predictably, the Fed's proposal generated alarm in the same quarters where it arises today. Because the opposition was so vehement, the Senate Banking Committee dropped the interstate provisions of S. 890 and simply approved the streamlined procedural provisions (which later became law).

In revisiting the question in 1981 and 1982, Congress responded to new requests from the regulators to allow special handling of troubled banks and thrifts. Again, protests were heard to the effect that the regulators' proposal would open the doors wide to full nationwide banking. Congress reacted by erecting a series of hurdles for out-of-state bidders before they could purchase either a bank or a thrift. H.R. 4701 retains those hurdles intact, and they have had their effect. After four years, only one transaction involving the purchase of a failed bank by an out-of-state bank holding company has occurred (Chase Manhattan Corporation's purchase of Park Bank, St. Petersburg, Florida).

Clearly, as these examples indicate, the floodgates to nationwide banking were not opened by the 1982 "Garn-St Germain Act," nor will they be opened by H.R. 4701. I want to emphasize the view of bank holding company management that the purchase of a failing institution is a deliberate undertaking prone to unpleasant surprises and higher costs than anticipated. Purchasing a failing institution is not necessarily a golden opportunity. To make such an acquisition succeed, much time, energy and patience are required. Yet, from the standpoint of depositors and the protection of the federal deposit insurance fund, such acquisitions are clearly sound public policy.

In spite of these clear facts, the same arguments are being leveled against H.R. 4701 that were made against the proposals in 1975 and 1981-82. Continuing opposition has led regulators to add restrictions in the bill which we feel go too far. I have mentioned in the first part of my statement that the restrictions constitute a disincentive to the acquisition of failing institutions. In my view, Congress should moderate disincentives in order to enhance the attractiveness of institutions which are, by definition, not inherently attractive.

Basic Principles

In the Association's 1975 statement to the Senate Banking Committee, we stated several principles which are still relevant. First, all possibilities of a rescue within a state should be exhausted before acquirers are sought out-of-state; second, appropriate coordination among federal and state banking agencies should take place; third, the agencies should be authorized to act before an institution has reached the point of imminent failure so that there is still some degree of equity left in the bank and a greater probability that it can be made a successful operation; and finally, a national policy should be established by the legislation and it should not be hampered by restrictive state laws.

There is one further consideration worth noting. If Congress were to enact H.R. 4701 and thereby set a national policy for dealing with troubled depository institutions, we believe it should be permanent law. The many hearings held over the years by the distinguished Chairman of the Subcommittee attest to the fact that bank problems recur and there is a continuing need to address them. Congress can readdress this policy whenever it chooses, but the basic law should be maintained without reverting to a "sunset" provision. This will assure the customers of U.S. depository institutions that a permanent program is in place to assure the safety of their insured deposits.

Extraneous Amendments

The Subcommittee is being urged to adopt extraneous amendments to H.R. 4701 that would render the bill virtually unworkable (see attached analysis). On the one hand, it has been proposed that concentration-of-resources provisions similar to those contained in H.R. 2707 be added to the bill. On the other hand, others have urged that the Community Reinvestment Act provisions that were in H.R. 2707 also be added to H.R. 4701.

There are two responses I should like to make to these proposals. First, H.R. 4701 is a consumer protection bill in the most fundamental sense. Its whole purpose, together with the efforts of the regulators and the operation of the insurance funds, is to protect insured deposits and assure that the customer services provided by failing institutions will continue to be available with a minimum of disruption. There can be nothing more important to consumers, small businessmen and farmers than the maintenance of a safe and sound system of depository institutions. We therefore do not accept the notion that additional concentration or community reinvestment standards should be included in H.R. 4701.

Second, the addition of these provisions would not be consistent with H.R. 2707 itself. Section 4 of H.R. 2707 includes a provision rendering the concentration limits in the bill inapplicable to emergency situations covered by the "Garn-St Germain Act." Section 6 specifically exempts the same emergency acquisitions from the new CRA standards that would be imposed on interstate acquisitions by H.R. 2707. Accordingly, to be consistent with H.R. 2707, the extraneous amendments proposed to H.R. 4701 should be rejected.

Specific Provisions

H.R. 4701 would allow the bank regulatory agencies the flexibility to deal with "failing" banks and bank holding companies, as well as "failed" banks, and we strongly support this change. The new authority would ease the burden on the federal deposit insurance fund and consequently on the nation's commercial banks that maintain the fund through their yearly assessments. It also will make acquired institutions healthier much more quickly because they will have sounder assets and greater capital strength than "failed" institutions.

Two subparagraphs--Sec. 5(D) and Sec. 5(E)--provide new and unique authority to state bank supervisors in the case of "unassisted transactions" involving a failing bank holding company. In these cases, the state supervisor would make the determination as to which company is the winning bidder, without regard to the amount of the bids. The Federal Reserve Board is given a secondary role, able to intervene only if it finds inadequate managerial or financial resources in the acquiring institution chosen by the supervisor. This Subcommittee should carefully consider whether it wishes to give state banking supervisors this much latitude, displacing, in these transactions, the role of the Federal Reserve Board as the principal supervisor of bank holding companies.

Conclusion

Finally, Mr. Chairman, we believe action on this proposal should not be delayed. We take the regulators seriously. Problems do exist, and this bill is necessary to deal with those problems. The bill represents a modest expansion of the 1982 emergency acquisition authority; its basic innovation, to allow acquisition of failing bank holding companies by out-of-state purchasers, dates back to a proposal made in 1975. H.R. 4701, therefore, is a far cry from a sudden or fundamental change in banking law.

SUMMARY AND ANALYSIS OF THE
INTERSTATE CONCENTRATION STANDARDS AND COMMUNITY BENEFITS REQUIREMENTS
OF
H.R. 2707

Concentration of Resources

Section 4 of H.R. 2707 prohibits the Federal Reserve Board from approving an application by a bank holding company to make an interstate acquisition if: (1) consummation of the proposal is likely to lead to an undue concentration of resources in the provision of banking services, (2) the applicant and the banking organization to be acquired both are among the largest 25 U.S. banking organizations measured by domestic deposit size, (3) the applicant bank holding company would control upon consummation more than 1 percent of total domestic deposits, or (4) consummation of the proposal would violate any nondiscriminatory deposit caps statutorily established by the states.

These concentration limits would not apply when a state or the Comptroller of the Currency identified a proposed interstate acquisition as necessary to prevent probable failure of the bank to be acquired or when the bank to be acquired is de novo or has assets of $100 million or less.

The provisions of section 4, which would add new paragraphs (6) and (7) to section 3(d) (i.e., the Douglas Amendment) of the Bank Holding Company Act, raise many difficulties ranging from technical definitional concerns to substantive theoretical problems. Paragraph 6(A) would generally prohibit the Board from approving an interstate acquisition if the proposal would likely lead to an undue concentration of resources in the provision of "banking services" in the United States or "any State or region of the United States." Thus, this section introduces new terms relating to the appropriate product and geographic markets in which to assess a proposed banking transaction. That is, by substituting the term "banking services" for the term "business of banking" currently embodied in the Bank Holding Company and Bank Merger Acts, section 6(A) would abandon the long line of judicial and regulatory interpretations of the fundamental concept of product market. Also, the same may be said with regard to the replacement of the current statutory language defining geographic markets with the new language of section 6(A) referring to "any region of the United States." These new product and geographic tests are new, untried and unnecessary.

Paragraph 6(B) supplements paragraph 6(A) by imposing certain numerical limitations, as described above. The first question that must be asked is why paragraph 6(B) is needed, especially in light of the plenary power granted to the Federal Reserve Board by paragraph 6(A). Second, it must be noted that all the numerical limitations are purely arbitrary and not supported by any evidence in the record. Third, certain of the numerical limitations are defined in terms of "total domestic deposits." The relevance of "deposits" as a indicator of bank size is dubious; perhaps "assets" should be employed. Whatever the measure, however, the reliability, consistency and current availability of the measure must be verified. Fourth and finally, many conceptual arguments may be made against the implementation of concentration standards. Briefly, they are: existing antitrust laws may be used to restrict anticompetitive increases in banking resources; size limits would single out the banking industry for special treatment and have undesirable effects on banking structure and operations. The business of banking is not concentrated now in comparison with many other industries and can be expected to remain relatively unconcentrated.

Community Benefits Requirements

Current laws and regulations provide that the Federal Reserve Board and other federal bank regulators consider an applicant's performance in serving the community in connection with every proposal to expand, including proposals under section 3(d) of the Bank Holding Company Act, 12 U.S.C. § 1842(d). However, section 6 of H.R. 2707 imposes substantial new requirements on the bank holding company applicants that utilize the interstate provisions of section 3(d) of the Bank Holding Company Act. These provisions unilaterally favor consumer groups and, in addition, depart markedly from existing law. In illustration of this last point, note that the provisions of existing law regarding the community benefits associated with bank mergers and acquisitions require the appropriate bank regulator to "take such [community benefits] record into account in ... evaluation of an application ...." 12 U.S.C § 2904. In contrast, section 6 of H.R. 2707 would require that "... Board shall not approve an application under this [interstate] subsection unless ..." certain community benefits requirements are met. (emphasis supplied).

Section 6 of H.R. 2707 Act precludes the Federal Reserve Board from approving an interstate acquisition under section 3(d) unless: (1) applicable CRA ratings and evaluations are made public pursuant to a statutorily prescribed scheme, (2) the applicant bank holding company has made public and written commitments to "significantly improve the availability and affordability of credit and deposit services of the bank to be acquired", (3) the applicant has committed to make available on an annual basis the number and volume of loans originated by the bank, segmented by certain categories and within certain geographic areas, (4) the applicant bank holding company and each of its subsidiary banks have a CRA rating of at least "good" and the proposed acquisition would significantly improve the availability and affordability of credit and deposit services, and (5) the applicant has not exhibited a pattern of opening or closing branches in low-or moderate-income areas or failed to provide deposit services to such areas.

There are numerous other provisions that place detailed procedural requirements on bank holding company applicants under section 3(d) of the Bank Holding Company Act. These provisions, together with those described immediately above, are drafted to unilaterally favor community groups and impose substantial burdens on both the banking industry and the federal regulators. Prime among the objectionable provisions is the ambiguity and possible breadth of interpretation of certain terms, such as "substantially improve the availability and affordability of credit and deposit services." On its face, this language imposes very troublesome requirements, possibly including "life line" accounts and below-market loans. Other objectionable provisions in section 6 are listed below:

1) Subsection 9(C)(ii). This subsection provides that once a bank holding company employs the interstate provisions of the bill the new requirements in subsection (i) regarding disclosure of CRA-type evaluations and ratings shall apply to every subsequent transaction, whether interstate, intrastate, branch opening etc. This provision "bootstraps" these new requirements to transactions already covered under current law.

2) Subsection 9(D)(iii)(II). This subsection requires the Fed to hold an informal public hearing at the request of any person who raises a "substantial issue" regarding the applicant bank holding company's CRA record. This test for triggering a hearing is different from the current test, which requires a hearing only where there is a question of material fact. The new test could require a hearing in cases merely involving differences of opinion regarding an applicant's record and would provide community groups the opportunity to delay and increase costs associated with the application process. At a minimum, subsection 9 (D)(iii)(I) should be amended to reinstate the existing test for a hearing.

3) Subsection 9(D)(iii)(I) of section 6 provides for a 45-day comment period on affected applications, compared to the current requirement for a 30-day comment period. This subsection should be amended to provide for 30 days in order to streamline the application process period and to bring it into conformance with current law.

4) Section 9(B) precludes the Fed from approving an application under the interstate provisions if the applicant has exhibited a "pattern" of certain activities regarding opening and closing banks or failing to provide deposit services in certain areas.

Aside from substantive difficulties in discerning what actions constitute a "pattern" and what are the concerns associated with "opening" banks, this subsection appears to be an ex post facto provision that would punish bank holding companies for past behavior that was not illegal at the time it was engaged in and, therefore, may be unconstitutional.

5) Section 9(A)(iv)(I) precludes the Fed from approving interstate applications unless the CRA ratings of the applicant banks are a "2" on a 5 point scale. This required rating is too high; it should be reduced to a "3" and, as in current law, the applicants' should be given credit for the services offered by their nonbank subsidiaries. See, for example, 12 C.F.R. § 228.8(c). Moreover, it is curious that, unlike all other examination ratings, this one is prescribed by statute rather than left to the discretion of the regulators.

6) Subsections 9(A)(iii)(I) and (II) impose a requirement on applicant bank holding companies to disclose information that is categorized by type of loans and communities. These requirements in part duplicate existing requirements and, moreover, impose a substantial burden on bank holding companies to compile information for disclosure to the public, including to their competitors. The scope of requested information required by this subsection should be analyzed by banking loan and data experts who know what information currently and practically is available and are able to assess the competitive impact of disclosure.

7) Subsections 9(A)(ii) and (iv)(II) require an applicant to undertake commitments stating how a proposed interstate acquisition would "significantly" improve the availability and affordability of credit and deposit services offered by the bank to be acquired. The "significantly" improve standard is too rigorous in that it assumes all target banks are not currently satisfying the needs of their community. The phrase "significantly improve" should be deleted and replaced with the word "affect" or, at minimum, the adverb "significantly" should be deleted.

8) Subsections 9(C)(I) and (II) provide for the preparation by the appropriate bank regulator of a CRA rating and evaluation that shall be disclosed publicly and not contain any reference to a person or organization that has provided information in confidence. This provision is a major change from current procedures, which do generally provide for the confidential treatment of examination reports and do not generally allow for confidential treatment of information provided to the government by outside sources, unless such information falls within the definition of certain types of exempted information. See, 5 U.S.C. §§ 552 (b)(8) and (b)(4). Departure from these practices should be undertaken very carefully. For instance, if CRA exam reports are to be made public, it should be made explicit that this is an exception from general practices and does not, for example, set a precedent for the release of other exam reports. Second, the applicant bank holding company or bank should be given a preliminary copy of the exam evaluation to review and comment upon, especially where confidential information may be provided by outside groups. Finally, the practice of allowing the provision of confidential information by outside groups should not be permitted except pursuant to the terms of existing law as contained in the Freedom of Information Act. It would be a dangerous precedent, and contrary to the spirit of open government, to permit any person or group to submit confidential information relevant to the rights of third parties.

9) Subsection 9(A)(iv)(II) requires the Board to state explicitly in its orders approving interstate acquisitions the reasons why an applicant's proposal meets all the various community benefits requirements in section 6. This requirement departs from existing law, by which the Board is not affirmatively required to comment in its orders on any specific factor (such as competitive consequences, managerial or financial factors etc.) associated with a proposal. This requirement in subsection 9(A)(iv)(II) elevates the importance of these CRA factors above other traditional, basic considerations and would require the Board to issue statements (not now technically required), and extremely detailed ones at that.

5/7/86

Citicorp
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Hans H. Angermueller
Vice Chairman

June 14, 1985

The Honorable Fernand J. St Germain
Chairman, Committee on Banking,
Finance & Urban Affairs
U. S. House of Representatives
2129 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman St Germain:

During the recent testimony of the Association of Bank Holding Companies on interstate banking, you requested specific information on how bank expansion of an institution such as Citicorp has benefited communities in California, Illinois, Maine, Florida and other states. The Association asked that we reply directly to you, and this letter is pursuant thereto.

Citicorp's growth to date has been based on the firm conviction that full and free competition is the only way to guarantee the best deal for the public, and on our philosophy that we must go beyond just serving the financial needs of our customers; we must also enhance the quality of life of the communities which we serve.

In 1975, Citicorp, believing that the American consumer should be a major factor in our growth, made a strategic decision to invest in the establishment of a consumer business. Today it accounts for over 1/3 of our revenues. We have deliberately chosen to do all we can to meet the total financial needs of American consumers.

Citicorp's experience in the states you mentioned during the hearings illustrates the benefits already derived from increased competition and why interstate banking is good for the public.

The states represent different forms of interstate banking by law. For example:

- South Dakota allows limited banking
- Maryland will expand from allowing only Section 4C(8) activities to permitting full service banking in 1986
- Maine has opened its borders to full interstate banking
- Our California, Florida and Illinois S&L acquisitions were substantially assisted by the Garn-St Germain Bill (1982)

Together, they represent a diversity of experience and a good test of the benefits of interstate banking.

South Dakota, for example, passed legislation in 1980 allowing Citicorp to set up a national bank which would engage, among other things, in the bankcard business. Today we employ 2500 people, making us the second largest employer in the State. Our $25 million office complex measures over 360,000 square feet, required 44,000 man-days of construction workers, and 3,200 tons of steel and concrete from local suppliers. This year we will pay $14 million in local taxes and purchase $9 million in goods and services, from local vendors. As evidence of our impact on the local economy 30 new postal workers were hired and a new postal service sub-station is being planned to handle our 20 million additional pieces of mail each month.

Our second example is Maryland, where our recent expansion started 10 years ago when we acquired a failing credit card company called National Acceptance Corporation, under Section 4C(8) of the BHC Act. We rescued and expanded the business such that today we employ 1,100 with a $16 million payroll, more than 600,000 Marylanders use our Choice card to finance more than $500 million in purchases each year from over 18,000 Maryland retail businesses.

We also lend Marylanders $100 million in home mortgages, and contribute $250,000 a year to local charities.

In the past three years we've managed or co-managed over $1.2 billion in bond issues for the State of Maryland ranging from public improvement bonds for Howard, Prince Georges and Anne Arundel counties, to construction and multi-housing development bonds for the Washington Suburban Sanitary District and the Maryland Community Development Administration.

This continues a tradition which began in the 19th century when Citibank helped finance the construction of the Baltimore and Ohio Railroad and the rebuilding of the City of Baltimore after the devastating fire in 1904.

The positive impact we have had encouraged Maryland recently to pass a bill which permits interstate banking beginning in 1986. The legislators understood the value that more Citicorp expansion would add. Citicorp alone has promised to hire 1,000 Marylanders in an area that has 5,000 unemployed. This, in turn, will produce $6 million more in personal income and $750,000 more state and local taxes. Because of the multiplier effect, our overall impact will be much greater than this.

Maine, our third example, is one of the first states to pass interstate banking legislation under the Douglas Amendment.

In September 1984, Citicorp opened a de novo full service national bank in Maine. Citibank, Maine now has five offices in two communities, employs 43 people with 22 more to be hired by year-end, pays over $2.5 million in salaries, rent and other local expenses, and has originated over $33 million in mortgages at lower rates than many local banks. We have also committed $5 million for small business loans in response to the Governor's coalition.

The fourth illustration of the public benefits of interstate banking is Citicorp's acquisition of the failing S&L's in California, Florida and Illinois.

After a substantial investment of capital and management resources in each of the three institutions, mortgage lending has been reactivated, consumer deposit outflow reversed, 3,500 jobs of S&L employees saved and stability returned to the customer base.

As the table below indicates, the three S&L's have increased their residential mortgage portfolio by $1.346 billion since Citicorp's acquisition. This amount is even more significant when we remember that at the time of acquisition, virtually no residential mortgages were being made.

It's worth noting some of the consumer benefits these Citicorp rescues have brought in terms of loan availability and the introduction of new products and services not available in the market before.

	At Acquisition ($Mill)		April 1985 ($Mill)		Change in
	Mortgages	Deposits	Mortgages	Deposits	Mortgages
California	2535	1066	2840	2790	315
Florida	1228	1479	1777	2022	549
Illinois	2181	3323	2663	3595	482
Total	5944	5868	7280	8397	1346

For example, in Illinois, the mortgage portfolio has increased by $482 million in the one year since acquisition, and we expect to originate $600 million in new mortgages this year (35% to first-time home buyers). Not only are our mortgage rates in the lowest quadrant for the local industry, but we were the first to offer Illinois consumers the option to switch from adjustable to fixed rate mortgages after the time of origination. And we were the first in Illinois to offer consumers an "Expandable" CD allowing additional deposits at the same guaranteed rate.

In Florida, $875 million in new mortgages will be originated this year to further expand the $549 million increase in the mortgage portfolio since our take-over in 1984. This resurgence in mortgage lending will make Florida's Citicorp Savings the second largest lender in Broward County, and the third largest in Dade County for 1985. And we are the first to offer a number of special services designed specifically for all our elderly customers such as seated teller service, no waiting lines, after-hour appointments, and free seminars on special topics for seniors. Our branches have become a source of social, informational and financial support for local seniors.

Nearly $500 million in new mortgages will be made by Citicorp Savings in California utilizing a new rapid- mortgage approval system to benefit nearly 8,000 potential homebuyers this year. A graduated repayment system was introduced for Californians which is the first to allow lower payments during the early years, easier qualification and a substantial savings in total interest over a shorter life of the mortgage.

The three institutions will make a total of $1.975 billion in new residential mortgages this year. This amount is noteworthy in and of itself, but even more because only one year ago, some regulators regarded the S&L's as being in such terrible financial shape that regardless of any government support arrangement, they were almost outside the reach of the private sector. Liquidation of these institutions would have disrupted local economies, caused large numbers of employees to be unemployed and further eroded the public's confidence in the banking system.

In overall terms, Citicorp's growth is not limited to the four cases just examined. While this letter has focused primarily on our consumer services, it should be noted that we have a long standing commercial business, which by loan volume would also rank Citicorp as one of the largest banks within many of the states in which we operate. Our expansion has stimulated regional economic growth in terms of jobs and taxes in these states by supplementing the capabilities of local banks which are often unable to provide the most attractive financing needed by local businesses (both in terms of amount required, or cost). Whether acting alone or in conjunction with other banks, the net result is that Citicorp has become a leading financial supporter of major economic development projects throughout the U.S.

Twelve of the 40 states in which we operate are cited as examples (S&L data excluded).

STATES	LOANS OUTSTANDING ($million) 1983	1984	CHANGE
CALIFORNIA	2,779	4,075	1,296
COLORADO	722	1,151	429
CONNECTICUT	377	554	177
FLORIDA	1,440	2,253	813
GEORGIA	796	910	114
ILLINOIS	1,105	1,324	219
MARYLAND	166	353	187
MASS.	258	530	272
MINNESOTA	155	253	98
MISSOURI	210	320	110
NEW JERSEY	577	803	226
TEXAS	2,636	2,978	342
TOTALS	$11,221	$15,504	$4,283

Citicorp's total loans outstanding within these 12 states increased from $11.2 billion to $15.5 billion from 1983 to 1984, or $23.6 billion if the S&L loan amounts are included. The 1983-84 increases were experienced in all 12 states, and from growth in all major categories of consumer and business loans (mortgages, automobile, commercial and industrial). This growth reflects both the need and attractiveness of these services because if our rates and fees are not attractive, we will not grow.

STATES	Citicorp Employees	STATES	Citicorp Employees
CALIFORNIA	3395	MARYLAND	1100
COLORADO	2459	MASS.	214
CONNECTICUT	123	MINNESOTA	73
FLORIDA	1836	MISSOURI	1195
GEORGIA	461	NEW JERSEY	267
ILLINOIS	2864	TEXAS	687
		TOTAL	14,674

Furthermore, Citicorp employs 14,674 people in these 12 states. Based on a Delaware Chamber of Commerce study, updated in 1985, which looks at the economic impact of banking employment in a community, the employees in these 12 states have created 17,210 additional spin-off jobs in other companies, $890 million in personal income, $570 million in retail sales, and $3.1 million in income taxes paid. We view these as critical factors in the economic growth of the communities we serve.

Also vital to most Americans is educating their children, an expense that has surpassed most peoples ability to go it alone. One out of four college students rely in part on student loans. As the country's largest private student loan lender, Citicorp helps finance the education of nearly 500,000 students nationwide representing some $1.2 billion in 14 states.

We are particularly proud that much of that financing is in states where other lenders would not, or could not, step forward to help develop their future citizens.

Included in this are the 15,000 loans we have made to students attending the 40 United Negro College Fund schools. Today we make loans to 26% of all the students attending UNCF institutions. It is part of our commitment to assist students who meet federal eligibility, but who cannot get local bank financing. Dr. Oswald Bronson, the President of Bethune-Cookman College and Chairman of UNCF testified before the U. S. Senate in 1983 that the ...

> "Citibank Program has been responsible for a notable increase in the participation of black students at UNCF Colleges in the Guaranteed Student Loan Program... regardless of the vicissitudes of the financial market...so they can be assured of the loans they need to enter school and stay in school...At Bethune-Cookman College we would have to close if the Citibank program were discontinued because so many of our students are dependent on these loans to continue their education. This program has meant that we have tripled the number of loan applications and thus increased enrollments".

Such investments in housing and youth strengthen our communities -- and our business. But so do our contribution grants to community organizations, our staff involvement in local activities and our affirmative housing and small business lending.

In keeping with our basic philosophy, we pledged at each S&L acquisition hearing to continue to positively impact the respective local communities. These promises are now being carried out.

For example, in Florida, the Chairman of Citicorp Savings co-chaired the First Miami Chamber of Commerce's summer jobs for youth program and committed funding for student employment. He recently became the Chairman of Neighborhood Housing Services of the State of Florida, the umbrella agency for programs working in 9 Florida cities. In addition, Citicorp Savings of Florida co-sponsored a summer blood drive which resulted in 8,000 pints being collected; co-sponsored a fund raiser with the National Foundation for Children; sponsored a Christmas Toy Drive collecting more than 600 toys from customers for needy children; and ran a United Negro College Fund Telethon in Miami and Tampa which raised over $200,000 for the Fund.

In Chicago, Citicorp Savings officers assisted more than 126 community organizations in 1984. The President is on the Board of Neighborhood Housing Services of Chicago and is Chairman of their annual fund raising activity. In addition we have developed a major grant request to fund the creation of a non-profit organization under the Local Initiatives Support Corporation (LISC) that will syndicate tax shelter benefits to restore Chicago's low-income housing stock.

The same level of staff involvement exists at Citicorp Savings of California. Forty top officers now participate in our new Shared Executive Program which provides volunteer service, including board membership, to non-profit community organizations in the Oakland area. Innovative grants have been made for housing rehabilitation in West Oakland; to Neighborhood Housing Services for new low-income housing; to Oakland Community Housing, Inc. for construction of a 30-unit low-income building; to Oakland Housing Authority for a 20-unit handicapped housing project; and to the Low-Income Housing Fund to leverage a commitment of $4 million for the Franciscan Friars to construct low-income tenant controlled housing.

These are some of the benefits to consumers and local businesses from Citicorp's growth in states outside of New York.

It is a growth that comes from the public's desire for more competition and from our desire to serve the broad segment of American consumers in meeting all of their financial needs. Our commitment started over 60 years ago -- and today it brings more benefits to American consumers and communities.

We are not the only ones who believe this. Experts on interstate banking have long predicted that geographic expansion would produce important public benefits. As you recall, President Carter's task force on interstate banking noted:

> "Today, the nation's major corporations and wealthy individuals frequently effect transactions with banks across state lines; it is only the small business and household customers who continue to be deprived of the benefits of a competitive interstate banking system".

Other studies which identify the benefits to the public of increasing bank competition are footnoted below.

Aspinwell, Southern Economic Journal 36 (1970) Shows increased competition reduces rates on residential mortgages; Edwards, Review of Economics and Statistics 46 (1964) Shows increased competition reduces rates on loans to business, especially small business; Jacobs, Business Loan Costs and Bank Market Structure National Bureau of Economic Research Occasioinal Paper 115 (1971) Shows that increased competition reduces rates on business loans; Marlow, Journal of Economics and Business 34 (1982) Shows that increased competition lowers rates on residential mortgages; Rhoades, Journal of Economics and Business 32 (1979) Shows that increased competition reduces loan rates and reduces service charges; Savage Bank Structure and Competition (1979) Shows that increased competition lowers loan rates and raises deposit rates. (See Atch #1 for full list of references.)

Today, most consumers want increased bank competition. Recent surveys by organizations like Cambridge Research, Opinion Research, and Ruder, Finn and Rothman show that 70% of those who are aware of deregulation and 59% of all respondents say that deregulating financial services is good for consumers. Further, 70% of all consumers also consider banks as the best place to satisfy all of their financial needs. This is particularly true of those with modest-to-medium income, working women and minorities who have substantially higher confidence in bankers than any other financial service providers.

In addition, business leaders increasingly view more bank competition as good for local businesses. A recent Crain's Chicago Business survey found that most (78%) of the Illinois business executives favor interstate banking.

The current head of the US Chamber of Commerce Frank Morsani, speaking as a small businessman has written...

> "The legal system committed to keeping banks out of local markets has many unfortunate effects on small business needs...Small business, restricted to local banks is effectively denied access to the national market for money. In periods of tight credit the problem becomes particularly acute...Probably the most detrimental part of the current banking situation is that of stymieing business growth..."

And, the Maryland Chamber of Commerce issued a task force report in 1983 calling for increased bank competition, because it would result in more economic development.

Finally the Call Reports of US banks (Report of Condition and Report of Income) show that increased bank competition causes local banks to put more of their deposits into loans for consumers and local businesses. Local banks in states permitting unlimited branching have a higher percentage of their deposits in loans than banks in states which restrict or prohibit branching. The increased lending to consumers and businesses can average over $1 billion more in loans outstanding per state compared to banks in states with restrictions.

These are elements of a strong consensus that is emerging on the public benefits from increased bank competition -- and our own experience has become part of that consensus.

I hope this provides some of the additional information you requested. We would be pleased to provide any further information you may desire.

Sincerely,

Hans H. Angermueller

Hans H. Angermueller

Attachment

ATCH #1

Studies of Benefits to Customers of Increasing Competition among Banks

1. Aspinwall, Richard C. "Market Structure and Commercial Bank Mortgage Interest Rates," *Southern Economic Journal* 36 (1970): 376-384. Shows that increased competition reduces rates on residential mortgages.

2. Edwards, Franklin R. "Concentration in Banking and Its Effect on Business Loan Rates," *Review of Economics and Statistics* 46 (1964): 294-300. Shows that increased competition reduces rates on loans to business, especially small business.

3. Edwards, Franklin R. "The Banking Competition Controversy," *National Banking Review* 3 (1965): 1-34. Shows that increased competition lowers loan rates and raises deposit rates.

4. Fraser, Donald R. and Peter S. Rose. "More on Banking Structure and Performance; The Evidence from Texas," *Journal of Financial and Quantitative Analysis* 6 (1971): 601-611. Shows that increased competition lowers loan rates.

5. Harvey, James M. "Chain Banking and Market Structure in Rural Banking Markets," *Bank Structure and Competition*, pp. 212-223. Proceedings of a Conference at the Federal Reserve Bank of Chicago, 1979. Shows that increased competition raises deposit rates.

6. Jacobs, Donald P. *Business Loan Costs and Bank Market Structure* National Bureau of Economic Research Occasional Paper 115. Cambridge, Mass., 1971. Shows that increased competition reduces rates on business loans.

7. Kaufman, George G. "Bank Market Structure and Performance," *Southern Economic Journal* 32 (1966): 429-439. Shows that increased competition reduces loan rates and raises deposit rates.

8. Marlow, Michael L. "Bank Market Structure and Mortgage Rates: Implications for Interstate Banking," *Journal of Economics and Business* 34 (1982): 135-142. Shows that increased competition lowers rates on residential mortgages.

9. Meyer, Paul A. "Price Discrimination, Regional Loan Rates, and the Structure of the Banking Industry," *Journal of Finance* 22 (1967): 37-48. Shows that increased competition lowers rates on loans to business, especially small business.

10. Phillips, Almarin. "Evidence on Concentration in Banking Markets and Interest Rates," *Federal Reserve Bulletin* (1967): 916-926. Shows that increased competition lowers rates on loans to business.

11. Rhoades, Stephen A. "Nonbank Thrift Institutions as Determinants of Performance in Banking Markets," *Journal of Economics and Business* 32 (1979): 66-72. Shows that increased competition reduces loan rates and reduces service charges.

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12. Rhoades, Stephen A. "Does Market Structure Matter in Commercial Banking?" Antitrust Bulletin 26 (1981): 155-181. Shows that increased competition reduces loan rates and service charges but has a negligible effect on deposit rates.

13. Rhoades, Stephen A. and Roger D. Rutz, Impact of Bank Holding Companies on Competition and Performance in Banking Markets. Staff Economic Studies No. 107. Washington, D.C.: Board of Governors of the Federal Reserve System, 1979. Shows that increased competition lowers loan rates and reduces service charges.

14. Rose, Peter S. and Donald R. Fraser. "The Relationships between Stability and Change in Market Structure: An Analysis of Bank Prices." Journal of Industrial Economics [illegible] (1976): 251-266. Shows that increased competition reduces service charges.

15. Rose, Peter S. and William L. Scott. "The Performance of Banks Acquired by Holding Companies," Review of Business and Economic Research 14 (1979): 18-37. Shows that increased competition reduces loan rates but has no effect on deposit rates.

16. Savage, Donald T. and Stephen A. Rhoades, "The Effect of Branch Banking on Pricing, Profits, and Efficiency of Unit Banks." Bank Structure and Competition, pp. 187-196. Proceedings of a Conference at the Federal Reserve Bank of Chicago, 1979. Shows that increased competition lowers loan rates and raises deposit rates.

5/20/85

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

May 2, 1986

TO : Honorable Charles E. Schumer
Attn: Steve Shevick

FROM : American Law Division

SUBJECT : Survey of State Interstate Banking Laws

This memorandum contains the results of a survey of consumer benefit and anti-concentration provisions associated with selected state laws authorizing some form of interstate banking. Consumer benefit provisions include state laws which relate to increased disclosure involving home mortgage and other lending activities, provisions prohibiting lending practices which discriminate on the basis of race, sex, or geographic location of the borrower, and similar provisons. Anti-concentration provisions include state provisions which limit the amount or percentage of assets or deposits which an institution may acquire or which otherwise limit expansion based on economic criteria.

SURVEY OF STATE INTERSTATE BANKING PROVISIONS

A. Alaska

Alaskan law provides that an out-of-state bank holding company may acquire an in-state bank or bank holding company, unless the bank involved is a "recently formed bank." (Alaska Stat. §06.05.235(e)). A "recently formed bank" is a bank that commenced operations on or after July 1, 1982. (Alaska Stat. § 06.05.235(g)). To assure full protection of the public, an out-of-state bank holding company that controls an in-state bank may be required to post a bond with state officials.

B. Arizona

Arizona law provides that an out-of-state financial institution may acquire an in-state institution which is in danger of closing, if the acquisition is necessary to protect the financial interests of Arizona residents who are depositors or creditors of the failing institution. (Ariz. Rev. Stat. § 6-201).

Arizona law also provides for the acquistion of healthy financial institutions by out-of-state institutions, so long as the in-state institution was chartered before May 31, 1984. However, this restriction expires five years after an institution is chartered, or on July 1, 1992, whichever is earlier. (Ariz. Rev. Stat. § 6-322). While the statute does not contain any specific consumer benefit or anti-concentration requirements, it does provide that an interstate acquisition may be denied on the grounds that it "is not fair and reasonable" to the depositors, beneficiaries, creditors or shareholders of the in-state institution, or on the ground that the out-of-state institution has exhibited a lack of honesty or integrity. (Ariz. Rev. Stat. § 6-326).

C. Connecticut

Connecticut law provides that any bank holding company located in one of the New England states may acquire a Connecticut bank, if a Connecticut bank holding company may acquire a bank in that New England state. (Conn. Gen. Stat. Ann. § 36-553). We could find no specific provisions regarding consumer benefit or anti-concentration requirements with respect to interstate acquisitions.

D. Delaware

Under the Delaware Code, an out-of-state bank holding company may acquire up to two newly chartered Delaware banks, provided the banks have no more than one office in the state, and that at least 100 persons will be employed in the state if one bank is acquired, and an additional 200 persons will be employed in the state if a second bank is acquired. (Del. Code. Ann. tit. 5, § 803). Further, the banks acquired under this provision must be operated in a manner and at a location that is not likely to attract customers from the general public of the state to the substantial detriment of existing banking institutions in the state. (Id.)

E. District of Columbia

The laws of the District of Columbia permit an out-of-state bank holding company to acquire a D.C. bank (in existence for two years) if the holding company is located in one of 11 southeastern states. (D.C. Act No. 6-136, Feb. 19, 1986). Bank holding companies located in one of these states must submit a "community development plan" setting forth the institution's plan to: (1) assist in the development of economically disadvantaged and underserved neighborhoods in the District; (2) assist in meeting the credit and deposit service needs of low- and moderate-income and minority District residents; and (3) assist in expanding support for small, minority, and women-owned business. The plan must include information as to how the institution will market and publicize its services to the above described groups. The institution must also provide a description of the low-and moderate-income communities that will be targeted, and describe the banking services which will be provided at a minimum cost to disadvantaged and minority residents. The applicant institution must agreee to cash government checks in target areas for individuals who do not have an account with the bank. The applicant must further describe how it will utilize District-based minority firms to meet the applicant's procurement needs, including goods and professional services, and specify how it will cooperate with the D.C. Department of Employment Services in identifying potential District residents as employees. The applicant must also designate a senior lending officer to review specifically the needs of small, minority, or women-owned businesses and community development organizations, and use its best efforts to increase the number of minority and female representatives on the applicant's board of directors and the board of District-based subsidiaries. Finally, the applicant must agree to sell food stamps.

A bank holding company not located in one of the enumerated southeastern states may also acquire a District bank (in existence for at least 2 years) if the out-of-state institution agrees to make loans and other extensions of credit in a "target economic development project" in the District equal to at least .0625 percent of the applicant's total assets or $50 million, whichever is greater, but in no event more than $100 million in such loans would be required. The applicant must also agree to establish at least 2 offices in target areas, in addition to any acquired offices. The applicant must agree to cash government checks for non-account holders, sell food stamps, and employ between 50 and 200 District residents depending upon its total assets. The applicant must submit a letter of credit for $10 million to secure compliance with these requirements.

F. Florida

Florida law authorizes a bank holding company located in any of 12 states or the District of Columbia to acquire a Florida bank, if a Florida bank holding company could acquire an institution in the other state. (Fla. Stat. Ann. § 658.295). The Florida bank involved must have been in existence for at least two years.

G. Georgia

Georgia law permits a bank holding company located in one of 10 southern states to acquire a Georgia bank or bank holding company, provided that a Georgia bank or bank holding company may acquire a similar institution in that state. (Ga. Code Ann. § 7-1-621 et seq.) The Georgia bank involved must have been in existence for at least 5 years. The interstate provisions specifically apply the provisions of the Georgia Bank Holding Company Act, which provides that the Georgia Commissioner of Banking may not approve an acquisition of a bank if the acquisition would result in a monopoly, or whose effect in any section of the state may be to substantially lessen competition or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Commissioner finds that the anticompetitive effects of the proposal are outweighed by the public benefits of approving the acquisition. (Ga. Code Ann. § 7-1-606).

H. Idaho

Idaho permits bank holding companies located in one of six contiguous states to acquire an Idaho bank or bank holding company, if the state involved permits its institutions to be acquired by an Idaho bank holding company. (Idaho Code § 26-2605). The Idaho institutions involved must be in existence for at least 4 years prior to the acquisition. The statute provides that an out-of-state acquisition may not be approved if the Director of the Department of Finance finds that consummation of the transaction "will tend substantially to lessen competition within [Idaho] unless the director finds that the anti-competitive effects of the proposed transaction are clearly outweighed by the benefit of meeting the convenience and needs of the community to be served; or the applicant has not established a record of meeting the credit needs of the communities which it or its subsidiary financial institution(s) service." (Idaho Code. § 26-2606).

I. Illinois

Under Illinois law, a bank holding company located in one of six midwestern states may acquire an Illinois bank or bank holding company, if an Illinois bank or bank holding company may make a reciprocal acquisition in that state. (Ill. Rev. Stat. ch. 17, ¶2510). The Illinois Banking Commissioner may not approve an application from an out-of-state institution unless he determines that the acquisition will promote the safety and soundness of the institution to be acquired, and that the banks already controlled by the out-of-state institution meet the convenience and needs of the communities served by them in accordance with the federal Community Reinvestment Act. In order to make this determination the out-of-state institution must furnish information on: (1) the activities conducted by the banks to ascertain the credit needs of the communities served, including efforts to communicate with community members; (2) the extent of marketing and special credit-related programs to make community members aware of the credit services offered; (3) the extent of participation by the banks' boards of directors in formulating policies and reviewing performance under the Community Reinvestment Act; (4) any practices intended to discourage applications for discourage applications for credit; (5) the geographic distribution of the banks' credit extensions; (6) evidence of prohibited discriminatory or other illegal credit practices; (7) the banks' records of opening or closing branches; (8) the banks' participation in local community development projects; (9) the banks' origination of residential mortgages, housing rehabilitation loans, home improvement loans, small business loans, and farm loans within their communities; (10) the banks' participation in governmentally-insured, guaranteed, or subsidized loan programs; and (11) the banks' ability to meet various community credit needs based on its financial condition and size.

The applicant institution must demonstrate to the Commissioner that it intends to adequately meet the convenience and needs of the community to be served by the Illinois bank it intends to acquire, and must furnish the information described above with respect to its plans to serve that community. In addition, it must explain how the transaction will bring net new benefits to Illinois. The application must contain a discussion of the applicant's initial capital investments, loan policies, investment policies, dividend policies, and general plan of business, including the full range of consumer and business services which will be offered. This discussion must include the specific steps which will be taken to meet the credit needs of individuals and small businesses. This information must be updated on an annual basis.

J. Indiana

Indiana law provides that a bank holding company located in one of four midwestern states may acquire an Indiana bank or bank holding company, if reciprocal privileges are allowed Indiana institutions. (Ind. Code. § 28-2-15-17). However, such an acquisition is not permitted if, following the acquisition, the out-of-state institution will hold a certain percentage of the total deposits held by all Indiana banks. The percentage limit is 10 percent if the acquisition occurs before July 1, 1986, 11 percent if the acquisition occurs between June 30, 1986 and July 1, 1987, and 12 percent if the acquisition occurs after June 30, 1987. (Ind. Code § 28-2-15-18). In addition, no application from an out-of-state institution may be approved unless the Indiana Department of Financial Institution determines that the existing bank subsidiaries of the applicant have complied with the Community Reinvestment Act, and the applicant indicates that it will provide adequate and appropriate services, including services contemplated by the Community Reinvestment Act, in the Indiana communities involved.

K. Kentucky

Any bank holding company located in a state which is contiguous to the State of Kentucky may acquire a Kentucky bank or bank holding company, so long as a Kentucky institution may make a reciprocal acquisition in the other state. (Ky. Rev. Stat. § 287.900). The Kentucky bank involved must have been in existence for at least five years. (Id.) After July 15, 1986, a bank holding company in any state with reciprocal provisions may acquire a Kentucky bank.

With respect to concentration issues, the Kentucky law provides that no acquisition may be permitted which results in one bank holding company or bank controlling more than 15 percent of the total deposits of all banks in the state. (Id.) For a five year period, no acquisition may be approved which will result in one institution controlling more than 3 banks in the state during any 12 month period. (Id.)

L. Maine

A financial institution holding company located outside of Maine may acquire a Maine financial institution with the prior approval of the Superintendent. (Me. Rev. Stat. Ann. tit. 9-B § 1013). The application to acquire a Maine institution must address the question of how the transaction will bring new "net funds" to Maine. (Id.) It shall include a discussion of initial capital investments, loan policies, investment policies, dividend policies, and the general plan of business, including the full range of consumer and business services which will be offered. The statement of loan policies must include the steps which will be taken to meet the credit needs of individuals and small businesses in the community to be served.

M. Maryland

The Maryland Code contains two provisions under which an out-of-state bank holding company may acquire a Maryland bank. Under the first provision (Md. Fin. Inst. Code § 5-901 et seq.), an out-of-state holding company may acquire a single Maryland bank which will have no more than 1 office in the state, employs at least 100 persons in the state, and is operated in a manner that is not likely to attract customers from Maryland to the detriment of existing banking institutions. These restrictions may be lifted if the out-of-state company agrees to acquire or commence construction of a facility in the state which will employ at least 1000 persons within 30 months, and will represent an investment of at least $25 million.

The second provision (Md. Fin. Inst. Code § 5-1001 et seq.) permits out-of-state holding companies located in the southeastern region of the country to acquire Maryland financial institutions if Maryland institutions may acquire financial institutions in the other state.

In approving an application under this provision, the Maryland Commissioner is required to consider whether the acquisition will result in an undue concentration of resources or substantial reduction of competition in Maryland. (Md. Fin. Inst. Code § 5-1003(a)(4)). He also must consider the initial capital investments, loan policy, investment policy, dividend policy and general business plan, including the amount and cost of consumer and business services to be offered. The applicant must state the specific steps it will undertake to meet the credit needs of small business and individuals in the community to be served, including low-and moderate-income individuals. The Commissioner is directed to assess the record of the applicant in meeting these credit needs in the past. The Commissioner must issue a report to the State Assembly each year on how out-of-state institutions are meeting the credit and capital needs of the State, rates or fees charged for services, and the degree to which concentration of economic resources has resulted from such acquisitions or competition has otherwise been affected.

N. Massachusetts

Massachusetts law permits a bank or bank holding company located in one of six New England states to establish a branch, or acquire a bank subsidiary in Massachusetts, if Massachusetts institutions have similar rights in the other state. (Mass. Gen. Laws Ann. ch. 167 §§ 38-39; ch. 167A §§ 1-7). All banks in Massachusetts must comply with state community reinvestment provisions, including out-of-state banks engaging in a banking business within Massachusetts. (Mass Gen. Laws Ann. ch. 167 § 14). This provision requires all banking organizations to make an annual report explaining how it has met the credit needs of the communities served, including the low-and moderate-income neighborhoods in those communities. Each report must include a delineation of the communities served, a listing of specific types of credit extended, a description of current efforts to help the communities, and similar information.

O. Michigan

Michigan law permits a bank holding company located in one of five midwestern states to acquire a Michigan bank, if a Michigan bank holding company could acquire a bank in that state. (Mich. Comp. Laws § 487.430b). After October 10, 1989, a bank holding company located in any state which has reciprocal provisions may acquire a Michigan bank. (Id.)

An out-of-state institution which wishes to acquire a Michigan bank under these provisions must sign an agreement with the State Banking Comission agreeing to comply with usury restrictions and other consumer benefit protections applicable to consumer loans. In addition, before approving an application under these provisions, the Banking Commissioner must assess the composite record of the bank subsidiaries of the applicant holding company in meeting the credit needs of the communities in the state in which such subsidiaries are located, including low- and moderate-income neighborhoods.

P. Nebraska

An out-of-state bank holding company may acquire a Nebraska banking institution provided: (1) the banking institution to be acquired is newly chartered; (2) it is limited to one office; (3) the services of the institution are limited to the solicitation and processing of credit cards and matters relating to the making of loans through credit cards; (4) the institution will have a minimum paid-in capital and surplus of a least

$2.5 million; and (5) the institution will employ at least 50 persons in the state. (Neb. Rev. Stat. § 8-1513).

Q. Nevada

An out-of-state bank holding company located in one of 11 western states may acquire a banking institution in Nevada, if a Nevada bank holding company may acquire a bank in that state. (Nev. Rev. Stat. Ann. § 666.225 et. seq.) After January 1, 1989, any out-of-state bank holding company may acquire a Nevada banking institution, if reciprocal provisions exist in that state. (Id.)

In reviewing an application under these provisions, the Nevada Administrator of Financial Institutions must consider the applicant's record of compliance with the federal Community Reinvestment Act and whether the proposed transaction will meet the needs of communities whose populations are less than 100,000 and whose residents are not being adequately served by existing financial institutions. An application may not be approved if the Administrator determines that it will tend to lessen competition substantially, unless the anticompetitive effects are clearly outweighed by the benefit of meeting the convenience and needs of the communities to be served. An application may not be approved if the applicant has not established a prior record of meeting the needs of the communities which it presently serves.

R. New York

An out-of-state bank holding company located in any state may acquire a New York bank, provided a New York bank holding company may acquire a bank in that state. (N.Y. Banking Law § 142-b). The New York Superintendent of Banking may not approve an application by an out-of-state institution under this provision if the out-of-state institution has received in the previous 24 months an assessment under the federal Community Reinvestment Act or state community reinvestment provisions indicating an unacceptable record in meeting the credit needs of communities served, unless the deficiency noted has been corrected. State community reinvestment provisions require the Superintendent to consider such factors as: (1) activities conducted by the banking institution to ascertain the credit needs of its communities; (2) the extent of the institution's maketing and special credit related programs; (3) any practices intended to discourage applications for credit; (4) the geographic distribution of the banking institution's credit extensions and denials; (5) evidence of discriminatory conduct; (6) the institution's record of opening or closing branches; (7) the institution's participation in community development projects; (8) the institution's origination of residential mortgages and housing rehabilitation loans; (9) the institution's participation in governmentally-insured, guaranteed, or subsidized loans; (10) the geographic distribution of ATM machines, point-of-sale terminals, and similar devices; and (11) other factors that bear upon the extent to which a banking institution is helping to meet the credit needs of its entire community. (N.Y. Banking Law §28b).

5. North Carolina

Under North Carolina law, a bank holding company located in one of 13 southeastern states or the District of Columbia may acquire a bank in North Carolina, provided a North Carolina bank holding company may acquire a bank in that state. (N.C. Gen. Stat. § 53-209 et seq.) The North Carolina bank must be in existence for at least five years prior to the acquisition. There does not appear to be any state consumer benefit or anti-concentration requirement with respect to such acquisitions.

T. Ohio

Until 1988, Ohio law permits a bank holding company located in one of 13 states or the District of Columbia to acquire an Ohio institution, providing that reciprocal privelges are granted by that state to Ohio bank holding companies. After 1988, a bank holding company in any state may acquire an Ohio institution, provided reciprocal acquisitions may be made in that state. (Ohio Rev. Code Ann. § 1101.05). No application may be approved under this provision if the acquisition would result in the applicant company controlling 20 percent or more of the total deposits in banks and thrift institutions in Ohio.

U. Oregon

A bank holding company located in one of eight western states may acquire a bank in Oregon which has been in existence for at least three years. (Or. Rev. Stat. § 715.025). No application may be approved if the acquistion will result in a monopoly or be in furtherance of any combination to monopolize or attempt to monopolize the business of banking in the relevant financial market served by the bank to be acquired, or will substantially lessen competition in such market, unless the public benefits clearly outweigh the anticompetitive effects.

V. Rhode Island

Rhode Island permits an out-of-state bank holding company located in one of the New England States to acquire a Rhode Island bank until July, 1986. After that date, a bank holding company in any state may acquire a Rhode Island bank. However, in either case the other state involved must permit Rhode Island must evaluate whether the transaction will promote the needs and convenience of the communities to be served by the financial institutions involved.

W. South Carolina

A bank holding company located in one of 13 southern states or the District of Columbia may acquire a South Carolina bank, provided South Carolina institutions may make a reciprocal acquisition in that state. (S.C. Code Ann. § 34-24-10 et seq.) Such an acquisition may not be approved if it would result in a monopoly of the banking business in South Carolina, or if it may tend to substantially lessen competition in the state, unless the anticompetitive effects are clearly outweighed by the public benefits. In every case the State Board shall take into effect the convenience and needs of the communities to be served.

X. South Dakota

South Dakota law provides that an out-of-state bank holding company may acquire a single new state bank in South Dakota which has a minimum total capital of $5 million and a single new national bank in South Dakota similarly captitalized, and in addition may acquire a single existing state bank in the state. (S.D. Codified Laws § 51-16-40). Any bank acquired under this provision is limited to a single banking office. If the bank acquired is a new bank, it must be operated in a manner and at a location wich is not likely to attract customers from the general public to the substantial detriment of existing banks.

Before approving an application to acquire a bank by an out-of-state holding company, the South Dakota Banking Commission is to consider: (1) whether the convenience and benefits to the public outweigh any adverse competitive effects; (2) whether such an acquisition may result in undue concentration of resourses or substantial lessening of competition; (3) whether the location of the proposed bank to be acquired is likely to attract the general public to the substantial detriment of existing banks; and (4) whether the economic advantages to the state, in terms of employment and capital investment, are adequate to permit approval of the applications. (S.D. Codified Laws § 51-16-45).

Y. Tennessee

Tennessee law provides that a bank holding company located in one of 14 enumerated states may acquire a Tennessee institution, if reciprocal provisions permit a Tennessee bank holding company to make a similar acquisition in that state. (Tenn. Code Ann. § 45-12-102 et seq.) However, an out-of-state institution may not acquire an institution if it results in that company controlling 16 1/2 percent or more of the total deposits in demand or transaction accounts in the state. (Tenn. Code. Ann. § 45-2-1405). In addition, the Tennessee bank to be acquired must have been in existence for at least 5 years.

Z. Utah

Utah permits out-of-state holding companies located in one of 11 western states to acquire a bank in Utah, provided Utah holding companies may make a similar acqusition in that state. (Utah Code Ann. § 7-1-702 et seq.) After Dec. 31, 1987, a bank holding company located in any state which permits a Utah institution to acquire a bank may also acquire a Utah bank. An application to acquire a Utah bank may be disapproved if the applicant has not established a record of meeting the credit needs of the communities which it serves.

AA. Virginia

Virginia permits a bank holding company located in any state to acquire a single newly chartered bank in Virginia, so long as such bank is chartered for the purpose of engaging in multi-state credit card operations. (Va. Code Ann. § 6.1-392).

A bank holding company located in one of 13 southeastern states or the District of Columbia may also acquire a Virginia bank, provided that a Virginia institution is permitted to acquire a bank in that state. (Va. Code Ann. § 6.1-399).

BB. Washington

Effective July 1, 1987, an out-of-state bank holding company may acquire a Washington bank (in existence for three or more years) if a Washington institution may acquire a bank in that state. (Ch. 310, Laws of 1985). An application shall not be approved unless the applicant has demonstrated an acceptable record in meeting the credit needs of its entire community, including low- and moderate-income neighborhoods. Further, Washington law makes it unlawful to vary the terms of a loan on the basis that a specific parcel of real estate used as collateral is located in a specific geographic area or to utilize lending standards that have no economic basis. (Wash. Rev. Stat. § 30.04.475).

Raymond Natter

Raymond Natter
Legislative Attorney
American Law Division
May 2, 1986

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

PAUL A. VOLCKER
CHAIRMAN

May 28, 1986

The Honorable Bill McCollum
House of Representatives
Washington, D.C. 20515

Dear Mr. McCollum:

In response to your request at the hearing on May 7 before the Subcommittee on Financial Institutions, I am pleased to enclose lists of bank holding companies and insured commercial banks with assets that fall between the $250 and $500 million range.

I hope this information is useful. Please let me know if I can be of further assistance.

Sincerely,

Paul

Enclosures

BEST COPY AVAILABLE

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985 - ($ Amounts in Millions)

State	Number of Holding Companies	Assets of Holding Companies
ALABAMA	4	$1,225
ALASKA	1	$380
ARIZONA	0	0
ARKANSAS	6	$2,350
CALIFORNIA	14	$4,893
COLORADO	1	$283
CONNECTICUT	1	$259
DELAWARE	0	0
DISTRICT OF COLUMBIA	3	$1,107
FLORIDA	11	$3,614
GEORGIA	2	$756
HAWAII	1	$360
IDAHO	1	$255
ILLINOIS	24	$8,309
INDIANA	15	$5,053
IOWA	3	$1,189
KANSAS	8	$2,690
KENTUCKY	9	$2,751
LOUISIANA	5	$1,956
MAINE	0	0
MARYLAND	2	$696
MASSACHUSETTS	8	$2,566
MICHIGAN	5	$1,700
MINNESOTA	3	$1,100
MISSISSIPPI	5	$1,655
MISSOURI	5	$1,763
MONTANA	3	$1,218
NEBRASKA	0	0
NEVADA	0	0
NEW HAMPSHIRE	2	$650
NEW JERSEY	8	$2,412
NEW MEXICO	2	$638
NEW YORK	5	$1,800
NORTH CAROLINA	1	$263
OHIO	4	$1,206
OKLAHOMA	9	$2,854
OREGON	0	0
PENNSYLVANIA	10	$3,533
RHODE ISLAND	0	0
SOUTH CAROLINA	1	$315
SOUTH DAKOTA	2	$547
TENNESSEE	3	$1,028
TEXAS	19	$6,887
UTAH	0	0
VERMONT	3	$1,403
VIRGINIA	3	$1,064
WASHINGTON	1	$302
WEST VIRGINIA	6	$1,993
WISCONSIN	4	$1,312
WYOMING	0	0
	===	=======
	223	$76,335

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

---------------------------State =ALABAMA----------------------------

Holding Company	Location	Consolidated Assets
FIRST TUSKALOOSA CORPORATION	TUSCALOOSA	$373
FIRST COMMERCIAL BANCSHARES,	JASPER	$304
FIRST UNITED BANCORP, INC.	FLORENCE	$275
NATIONAL COMMERCE CORPORATIO	BIRMINGHAM	$273
STATE		$1,225

N= 4

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

---------------------------State =ALASKA---------------------------

Holding Company	Location	Consolidated Assets
FIRST INTERSTATE CORPORATION	ANCHORAGE	$380

N= 1

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

------------------------State =ARKANSAS--------------------------

Holding Company	Location	Consolidated Assets
SIMMONS FIRST NATIONAL CORPO	PINE BLUFF	$493
THE UNION OF ARKANSAS CORPOR	LITTLE ROCK	$492
FRANK LYON COMPANY	LITTLE ROCK	$408
STATE FIRST FINANCIAL CORPOR	TEXARKANA	$357
FIRST AMERICAN BANCSHARES, I	NORTH LITTLE ROCK	$322
ABT BANCSHARES CORPORATION	HOT SPRINGS	$278
STATE		$2,350

N= 6

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

------------------------State =CALIFORNIA------------------------

Holding Company	Location	Consolidated Assets
LEVY BANCORP	OXNARD	$490
COBANCO, INC.	SANTA CRUZ	$480
WESTLANDS DIVERSIFIED BANCOR	SANTA ANA	$460
PACIFIC WESTERN BANCSHARES	SAN JOSE	$428
SANTA BARBARA BANCORP	SANTA BARBARA	$400
ALEX BROWN FINANCIAL GROUP	SACRAMENTO	$352
BSD BANCORP, INC.	SAN DIEGO	$322
LA JOLLA BANCORP	LA JOLLA	$317
SOUTHWEST BANCORP	VISTA	$306
CAL REP BANCORP, INC.	BAKERSFIELD	$283
CENTENNIAL BENEFICIAL CORP.	ORANGE	$278
PLAZA COMMERCE BANCORP	SAN JOSE	$272
HOME INTERSTATE BANCORP	SIGNAL HILL	$255
BANCOMER HOLDING COMPANY	SAN DIEGO	$250
STATE		$4,893

N= 14

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-------------------------State =COLORADO--------------------------

Holding Company	Location	Consolidated Assets
INTERMOUNTAIN BANKSHARES OF	WESTMINSTER	$283

N= 1

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

------------------------State =CONNECTICUT------------------------

Holding Company	Location	Consolidated Assets
WESTPORT BANCORP, INC.	WESTPORT	$259

N= 1

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

--------------------State =DISTRICT OF COLUMBIA--------------------

Holding Company	Location	Consolidated Assets
D.C. NATIONAL BANCORP., INC.	WASHINGTON	$454
JAMES MADISON LIMITED	WASHINGTON	$353
SECURITY NATIONAL CORPORATIO	WASHINGTON	$300
STATE		$1,107

N= 3

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Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

--------------------------State =FLORIDA--------------------------

Holding Company	Location	Consolidated Assets
CITY NATIONAL BANK CORPORATI	MIAMI	$446
CAPITAL CITY BANK GROUP, INC	TALLAHASSEE	$387
POPULAR BANCSHARES CORPORATI	MIAMI	$355
INDEPENDENT COMMUNITY BANKS,	WINTER PARK	$344
AMERICAN BANKS OF FLORIDA, I	JACKSONVILLE	$329
BRANNEN BANKS OF FLORIDA, IN	DUNNELLON	$319
SEACOAST BANKING CORPORATION	STUART	$312
MICKLER CORPORATION	TAMPA	$295
MIDLAND BANCORP, INC.	ORLANDO	$282
JEFFERSON BANCORP, INC.	MIAMI BEACH	$274
THE FLAGLER BANK CORPORATION	WEST PALM BEACH	$271
STATE		$3,614

N= 11

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-------------------------------State =GEORGIA---------------------------

Holding Company	Location	Consolidated Assets
FIRST CITY BANCORP, INC.	MARIETTA	$458
FIRST STATE CORPORATION	ALBANY	$298
------------------------		----
STATE		$756

N= 2

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-------------------------State =HAWAII--------------------------

Holding Company	Location	Consolidated Assets
CB BANCSHARES, INC.	HONOLULU	$360

N= 1

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

---------------------------State =IDAHO---------------------------

Holding Company	Location	Consolidated Assets
VALLEY BANCORPORATION	REXBURG	$255

N= 1

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-------------------------State =ILLINOIS--------------------------

Holding Company	Location	Consolidated Assets
FIRST COMMUNITY BANCORP, INC	ROCKFORD	$481
MID-CITCO INCORPORATED	CHICAGO	$470
ILLINOIS MARINE BANCORP, INC	ELMHURST	$461
FIRST LAKE FOREST CORPORATIO	LAKE FOREST	$427
RIVER FOREST BANCORP	RIVER FOREST	$411
PREMIER BANCORPORATION, INC.	LIBERTYVILLE	$379
SUBURBAN BANCORP, INC.	PALATINE	$370
PREMIER FINANCIAL SERVICES,	FREEPORT	$349
FIRST AMERICAN BANK CORPORAT	ELK GROVE VILLAGE	$345
FINANCIAL NATIONAL BANCSHARE	ELGIN	$343
NORTHWEST SUBURBAN BANCORP,	MOUNT PROSPECT	$343
RAVENSWOOD FINANCIAL CORPORA	CHICAGO	$340
FIRST BUSEY CORPORATION	URBANA	$329
MARQUETTE NATIONAL CORPORATI	CHICAGO	$329
QUAD CITIES FIRST COMPANY	ROCK ISLAND	$325
AMALGAMATED ASSOCIATES COMPA	CHICAGO	$323
PEOPLES MID-ILLINOIS CORPORA	BLOOMINGTON	$319
COMMERCIAL CHICAGO CORPORATI	CHICAGO	$313
BEVERLY BANCORPORATION, INC.	CHICAGO	$296
SOUTH HOLLAND BANCORP, INC.	SOUTH HOLLAND	$290
HERITAGE FINANCIAL SERVICES,	BLUE ISLAND	$279
MANUFACTURERS NATIONAL CORPO	CHICAGO	$278
MERCHANTS BANCORP, INC.	AURORA	$257
FIRST OAK BROOK BANCSHARES,	OAK BROOK	$252

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-------------------------State =ILLINOIS--------------------------

Holding Company	Location	Consolidated Assets
STATE		$8,309

N= 24

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-------------------------State =INDIANA-------------------------

Holding Company	Location	Consolidated Assets
ST. JOSEPH BANCORPORATION, I	SOUTH BEND	$491
COMMERCE AMERICA CORP.	JEFFERSONVILLE	$446
MONEY MANAGEMENT CORPORATION	MERRILLVILLE	$380
FIRST MERCHANTS CORPORATION	MUNCIE	$380
PURDUE NATIONAL CORPORATION	LAFAYETTE	$378
MERCANTILE BANCORP, INC.	HAMMOND	$357
VALLEY FINANCIAL SERVICES, I	MISHAWAKA	$352
NATIONAL CITY BANCSHARES, IN	EVANSVILLE	$325
SECOND NATIONAL CORPOARTION	RICHMOND	$321
IRWIN UNION CORPORATION	COLUMBUS	$292
UNION BANC CORP	KOKOMO	$287
NORTHERN INDIANA BANCSHARES,	VALPARAISO	$270
FIRST BANCORP	INDIANAPOLIS	$266
FIRST MIDWEST BANCORP	NEW ALBANY	$256
FIRST NATIONAL CORPORATION	BLOOMINGTON	$252
---------------------------		------
STATE		$5,053

N= 15

L

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

--------------------------State =IOWA----------------------------

Holding Company	Location	Consolidated Assets
SECURITY NATIONAL CORPORATI	SIOUX CITY	$452
IOWA NATIONAL BANKSHARES COR	WATERLOO	$376
PEOPLES BANKSHARES, LTD.	WATERLOO	$361
STATE		$1,189

N= 3

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

--------------------------State =KANSAS--------------------------

Holding Company	Location	Consolidated Assets
ONE SECURITY, INC.	KANSAS CITY	$459
CNB FINANCIAL CORPORATION	KANSAS CITY	$385
MERCHANTS BANCORPORATION	TOPEKA	$351
MISSION BANCSHARES, INC.	OVERLAND	$340
UNION BANCSHARES, INC.	WICHITA	$321
VALLEY VIEW BANCSHARES, INC.	OVERLAND PARK	$292
MIDAMERICAN CORPORATION	ROELAND PARK	$278
KANSAS STATE FINANCIAL CORPO	WICHITA	$264
STATE		$2,690

N= 8

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

------------------------State =KENTUCKY--------------------------

Holding Company	Location	Consolidated Assets
FARMERS CAPITAL BANK CORPORA	FRANKFORT	$422
PIKEVILLE NATIONAL CORPORATI	PIKEVILLE	$350
CBT CORPORATION	PADUCAH	$299
KENTUCKY SOUTHERN BANCORP, I	BOWLING GREEN	$296
UNITED BANCORP OF KENTUCKY,	MANCHESTER	$292
ONB CORPORATION	OWENSBORO	$285
PEOPLES FIRST CORPORATION	PADUCAH	$280
COMMONWEALTH TRUST BANCORP,	COVINGTON	$274
KYNB BANCSHARES, INC.	LEXINGTON	$253
STATE		$2,751

N= 9

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Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-------------------------State =LOUISIANA-------------------------

Holding Company	Location	Consolidated Assets
JEFFERSON BANCSHARES, INC.	METAIRIE	$487
LBT CORPORATION	SHREVEPORT	$447
FIRST NATIONAL CORPORATION	COVINGTON	$390
THE TERREBONNE CORPORATION	HOUMA	$317
PIONEER BANCSHARES CORPORATI	SHREVEPORT	$315
STATE		$1,956

N= 5

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Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-------------------------State =MARYLAND-------------------------

Holding Company	Location	Consolidated Assets
F&M BANCORP	FREDERICK	$379
FARMERS NATIONAL BANCORP	ANNAPOLIS	$317
------------------------		----
STATE		$696

N= 2

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-----------------------State =MASSACHUSETTS-----------------------

Holding Company	Location	Consolidated Assets
CAPITOL BANCORPORATION	BOSTON	$465
FIRST NEW ENGLAND BANKSHARES	TAUNTON	$354
FIRST/MARTHA'S VINEYARD BANC	VINEYARD HAVEN	$328
CENTURY BANCORP, INC.	SOMERVILLE	$314
SECURITY BANCORP, INC.	BOSTON	$305
NEW ENGLAND BANCORP, INC.	WALTHAM	$274
CHARTER FINANCIAL CORPORATIO	FRAMINGHAM	$271
FIRST COOLIDGE CORPORATION	WATERTOWN	$255
STATE		$2,566

N= 8

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-------------------------State =MICHIGAN--------------------------

Holding Company	Location	Consolidated Assets
CB FINANCIAL CORPORATION	JACKSON	$480
UNITED MIDWEST BANCORPORATIO	TROY	$359
OMNIBANK CORP.	WYANDOTTE	$348
FIRST MACOMB CORPORATION	MOUNT CLEMENS	$260
FIRST STATE FINANCIAL CORPOR	EAST DETROIT	$253
STATE		$1,700

N= 5

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

------------------------State =MINNESOTA------------------------

Holding Company	Location	Consolidated Assets
NATIONAL CITY BANCORPORATION	MINNEAPOLIS	$486
NORTHSTAR BANCORPORATION, IN	WAYZATA	$328
KLEIN BANCORPORATION	CHASKA	$286
STATE		$1,100

N= 3

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

------------------------State =MISSISSIPPI------------------------

Holding Company	Location	Consolidated Assets
THE PEOPLES HOLDING COMPANY	TUPELO	$401
FIRST MISSISSIPPI NATIONAL C	HATTIESBURG	$399
UNITED SOUTHERN CORPORATION	CLARKSDALE	$311
NBC CAPITAL CORPORATION	STARKVILLE	$287
PEOPLES CAPITAL CORPORATION	MEREDIAN	$257
STATE		$1,655

N= 5

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-------------------------State =MISSOURI---------------------------

Holding Company	Location	Consolidated Assets
COMMUNITY BANCORP, INC.	MANCHESTER	$463
KANSAS CITY BANCSHARES, INC.	KANSAS CITY	$443
SOUTHSIDE BANCSHARES CORP.	ST. LOUIS	$331
METRO BANCSHARES, INC.	KANSAS CITY	$264
INTERNATIONAL BANCSHARES, IN	GLADSTONE	$262
STATE		$1,763

N= 5

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-------------------------State =MONTANA-------------------------

Holding Company	Location	Consolidated Assets
MONTANA BANCSYSTEM, INC.	BILLINGS	$463
FIRST INTERSTATE BANCSYSTEM	BILLINGS	$429
BANK OF MONTANA SYSTEM	GREAT FALLS	$326
STATE		$1,218

N= 3

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-----------------------State =NEW HAMPSHIRE-----------------------

Holding Company	Location	Consolidated Assets
SAVER'S BANCORP, INC.	LITTLETON	$385
NTC CORP.	NASHUA	$265
---------------------		----
STATE		$650

N= 2

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

----------------------State =NEW JERSEY------------------------

Holding Company	Location	Consolidated Assets
HUBCO, INC.	UNION CITY	$400
B.M.J. FINANCIAL CORP.	BORDENTOWN	$374
SOMERSET BANCORP	SOMERVILLE	$321
AMBOY-MADISON BANCORPORATION	OLD BRIDGE	$283
PEOPLES BANCORP	BELLEVILLE	$279
BROADWAY FINANCIAL CORPORATI	PATERSON	$254
BROAD NATIONAL BANCORPORATIO	NEWARK	$251
MIDLAND BANCORPORATION	PARAMUS	$250
STATE		$2,412

N= 8

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

------------------------State =NEW MEXICO-------------------------

Holding Company	Location	Consolidated Assets
NEW MEXICO BANQUEST INVESTOR	SANTA FE	$348
RIO GRANDE BANCSHARES, INC.	LAS CRUCES	$290
---------------------------		----
STATE		$638

N= 2

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-------------------------State =NEW YORK-------------------------

Holding Company	Location	Consolidated Assets
FIRST GLEN BANCORP, INC.	GLENS FALLS	$454
NORTH FORK BANCORPORATION, I	MATTITUCK	$397
COMMUNITY BANK SYSTEM, INC.	CANTON	$386
ARROW BANK CORP.	GLENS FALLS	$289
SUFFOLK BANCORP	RIVERHEAD	$274
STATE		$1,800

N= 5

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

----------------------State =NORTH CAROLINA----------------------

Holding Company	Location	Consolidated Assets
FIRST SECURITY FINANCIAL COR	SALISBURY	$263

N= 1

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

----------------------------State =OHIO----------------------------

Holding Company	Location	Consolidated Assets
LCB BANCORP, INC.	ELYRIA	$330
SECURITY BANC CORPORATION	SPRINGFIELD	$317
PEOPLES BANCORP INC.	MARIETTA	$308
LNB BANCORP, INC.	LORAIN	$251
STATE		$1,206

N= 4

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

State =OKLAHOMA

Holding Company	Location	Consolidated Assets
UNITED OKLAHOMA BANKSHARES,	OKLAHOMA CITY	$387
COMMERCIAL LANDMARK CORPORAT	MUSKOGEE	$376
FIRST BANCSHARES, INCORPORAT	BARTLESVILLE	$352
F & M BANCORPORATION	TULSA	$347
UTICA BANKSHARES CORPORATION	TULSA	$294
CENTRAL SERVICE CORPORATION	ENID	$290
FOUNDERS BANCORPORATION, INC	OKLAHOMA CITY	$288
UNION BANCORPORATION, INC.	OKLAHOMA CITY	$263
FIRST OF MCALESTER CORPORATI	MCALESTER	$257
STATE		$2,854

N= 9

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

------------------------State =PENNSYLVANIA------------------------

Holding Company	Location	Consolidated Assets
SOUTHWEST NATIONAL CORPORATI	GREENSBURG	$434
S & T BANCORP, INC.	INDIANA	$412
UNIVEST CORPORATION OF PENNS	SOUDERTON	$391
THE FRANKFORD CORPORATION	PHILADELPHIA	$372
FIRST FINANCIAL GROUP, INC.	WASHINGTON	$364
NATIONAL PENN BANCSHARES, IN	BOYERTOWN	$347
FINANCIAL TRUST CORP.	CARLISLE	$339
KEYSTONE HERITAGE GROUP, INC	LEBANON	$319
FB & T CORPORATION	HANOVER	$291
ACNB CORPORATION	GETTYSBURG	$264
STATE		$3,533

N= 10

Bank Holding Companies with Assets > \$250 Million & < \$500 Million
As of December 31, 1985
(\$ Amounts in Millions)

----------------------State =SOUTH CAROLINA----------------------

Holding Company	Location	Consolidated Assets
NBSC CORPORATION	SUMTER	\$315

N= 1

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-----------------------State =SOUTH DAKOTA-----------------------

Holding Company	Location	Consolidated Assets
MINNEHAHA BANSHARES, INC.	SIOUX FALLS	$292
DACOTAH BANK HOLDING CO.	ABERDEEN	$255
STATE		$547

N= 2

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-------------------------State =TENNESSEE-------------------------

Holding Company	Location	Consolidated Assets
WILLIAMSON COUNTY BANCORP, I	FRANKLIN	$465
VOLUNTEER BANCSHARES, INC.	JACKSON	$300
TENNESSEE NATIONAL BANCSHARE	MARYVILLE	$263
STATE		$1,028

N= 3

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

--------------------------State =TEXAS--------------------------

Holding Company	Location	Consolidated Assets
CHARTER BANCSHARES, INC.	HOUSTON	$482
AMERICAN STATE FINANCIAL COR	LUBBOCK	$480
SCHREINER BANCSHARES, INC.	KERRVILLE	$452
GRAND BANCSHARES, INC.	DALLAS	$442
BROADWAY BANCSHARES, INC.	SAN ANTONIO	$430
DALLAS BANCSHARES, INC.	DALLAS	$410
AMERICAN INCOME LIFE INSURAN	WACO	$407
FIRST VICTORIA CORPORATION	VICTORIA	$401
TEXAS SECURITY BANCSHARES, I	FORT WORTH	$371
FIRST BANCORP, INC.	DENTON	$351
RIVER OAKS BANCSHARES, INC.	HOUSTON	$338
CENTRAL NATIONAL BANCSHARES,	SAN ANGELO	$329
HOWLAND BANCSHARES, INC.	SAN ANTONIO	$311
UNICORP BANCSHARES, INC.	HOUSTON	$301
FIRST TEXAS BANCORP, INC.	GEORGETOWN	$292
INDEPENDENT BANKERS FINANCIA	DALLAS	$286
CONTINENTAL BANCSHARES, INC.	DALLAS	$284
UNITED TEXAS FINANCIAL CORPO	WICHITA FALLS	$266
SOBANK, INC.	TYLER	$254
---------------------------		------
STATE		$6,887

N= 19

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

---------------------------State =VERMONT---------------------------

Holding Company	Location	Consolidated Assets
VERMONT FINANCIAL SERVICES C	BRATTLEBORO	$496
HOWARD BANCORP	BURLINGTON	$495
MERCHANTS BANCSHARES, INC.	BURLINGTON	$412
STATE		$1,403

N= 3

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-------------------------State =VIRGINIA--------------------------

Holding Company	Location	Consolidated Assets
F & M NATIONAL CORPORATION	WINCHESTER	$379
COLONIAL-AMERICAN BANKSHARES	ROANOKE	$367
PIEDMONT BANKGROUP INCORPORA	MARTINSVILLE	$318
STATE		$1,064

N= 3

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

------------------------State =WASHINGTON------------------------

Holding Company	Location	Consolidated Assets
FIRST INDEPENDENT INVESTMENT	VANCOUVER	$302

N= 1

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

----------------------State =WEST VIRGINIA----------------------

Holding Company	Location	Consolidated Assets
UNITED BANKSHARES, INC.	PARKERSBURG	$412
NATIONAL BANC OF COMMERCE CO	CHARLESTON	$336
UNION BANCORP OF WEST VIRGIN	CLARKSBURG	$328
WESBANCO, INC.	WHEELING	$326
INTERMOUNTAIN BANKSHARES, IN	CHARLESTON	$313
FIRST BANC SECURITIES, INC.	MORGANTOWN	$278
STATE		$1,993

N= 6

Bank Holding Companies with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-------------------------State =WISCONSIN-------------------------

Holding Company	Location	Consolidated Assets
HERITAGE RACINE CORPORATION	RACINE	$410
COMMUNITY BANKS, INC.	MIDDLETON	$358
FIRST SOUTHEAST BANKING CORP	DARIEN	$294
F & M FINANCIAL SERVICES COR	MENOMONEE FALLS	$250
STATE		$1,312
		$76,335

N= 4

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985 - ($ Amounts in Millions)

State	Number of Banks	Assets of Banks
ALABAMA	7	$2,133
ALASKA	4	$1,477
ARIZONA	0	0
ARKANSAS	8	$2,792
CALIFORNIA	22	$8,164
COLORADO	6	$1,969
CONNECTICUT	4	$1,156
DELAWARE	5	$2,008
DISTRICT OF COLUMBIA	3	$1,089
FLORIDA	27	$9,255
GEORGIA	7	$2,370
HAWAII	1	$360
IDAHO	2	$718
ILLINOIS	34	$11,408
INDIANA	20	$6,310
IOWA	4	$1,369
KANSAS	8	$2,676
KENTUCKY	6	$1,825
LOUISIANA	13	$4,732
MAINE	1	$387
MARYLAND	2	$661
MASSACHUSETTS	21	$7,775
MICHIGAN	26	$8,909
MINNESOTA	10	$3,192
MISSISSIPPI	5	$1,652
MISSOURI	10	$3,303
MONTANA	3	$937
NEBRASKA	1	$487
NEVADA	1	$461
NEW HAMPSHIRE	6	$2,103
NEW JERSEY	14	$4,419
NEW MEXICO	3	$950
NEW YORK	15	$5,624
NORTH CAROLINA	2	$535
NORTH DAKOTA	1	$275
OHIO	16	$5,463
OKLAHOMA	8	$2,510
OREGON	2	$577
PENNSYLVANIA	18	$6,245
RHODE ISLAND	1	$396
SOUTH CAROLINA	1	$312
SOUTH DAKOTA	1	$252
TENNESSEE	7	$2,469
TEXAS	52	$18,582
UTAH	2	$526
VERMONT	4	$1,809
VIRGINIA	7	$2,308
WASHINGTON	2	$790
WEST VIRGINIA	6	$1,998
WISCONSIN	9	$2,698
WYOMING	2	$558
	===	========
	440	$150,974

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Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

--------------------------State =ALABAMA--------------------------

Bank	Location	Total Assets
UNION B&TC	MONTGOMERY	$433
FIRST NB OF TUSKALOOSA	TUSCALOOSA	$373
SOUTHTRUST BK OF DOTHAN	DOTHAN	$278
FIRST NB OF FLORENCE	FLORENCE	$276
NATIONAL BK OF COMMERCE OF	BIRMINGHAM	$267
SOUTHTRUST BK OF CALH NA	ANNISTON	$256
FIRST NB OF JASPER	JASPER	$250
-------------------------		------
STATE		$2,133

N= 7

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

---------------------------State =ALASKA---------------------------

Bank	Location	Total Assets
UNITED BK ALASKA	ANCHORAGE	$459
FIRST INTERSTATE BK AK	ANCHORAGE	$380
ALASKA NB OF THE NORTH	FAIRBANKS	$325
ALASKA PACIFIC BK	ANCHORAGE	$313
STATE		$1,477

N= 4

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-------------------------State =ARKANSAS--------------------------

Bank	Location	Total Assets
UNION NB OF LITTLE ROCK	LITTLE ROCK	$481
SIMMONS FIRST NB	PINE BLUFF	$413
FIRST NB OF FT SMITH	FORT SMITH	$341
TWIN CITY BK	NORTH LITTLE ROCK	$341
FIRST NB OF HOT SPRINGS	HOT SPRINGS	$337
STATE FIRST NB OF	TEXARKANA	$327
ARKANSAS B&TC	HOT SPRINGS	$278
FIRST NB OF EL DORADO	EL DORADO	$274
-----------------------		------
STATE		$2,792

N= 8

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

------------------------State =CALIFORNIA--------------------------

Bank	Location	Total Assets
BANK OF A LEVY	OXNARD	$490
COUNTY B&TC	SANTA CRUZ	$480
CALIFORNIA CANADIAN BK	LOS ANGELES	$476
SANTA MONICA BK	SANTA MONICA	$475
BANK OF STOCKTON	STOCKTON	$474
MECHANICS BK OF RICHMOND	RICHMOND	$456
PACIFIC VALLEY BK	SAN JOSE	$427
COMMERCIAL CENTER BK	SANTA ANA	$401
SANTA BARBARA B&TC	SANTA BARBARA	$400
METROBANK NA	LOS ANGELES	$394
MID-STATE BK	ARROYO GRANDE	$380
FARMERS & MERCHANTS BK OF CE	LODI	$366
EXCHANGE BK	SANTA ROSA	$357
CATHAY BK	LOS ANGELES	$331
LA JOLLA B&TC	LA JOLLA	$317
UNION SAFE DEPOSIT BK	STOCKTON	$303
SOUTHWEST BK	VISTA	$291
CALIFORNIA REPUBLIC BK	BAKERSFIELD	$283
FIRST TR BK	ONTARIO	$281
PLAZA BK OF COMMERCE	SAN JOSE	$272
PACIFIC BK NA	SAN FRANCISCO	$255
HOME BK	SIGNAL HILL	$255
STATE		$8,164

N= 22

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Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

--------------------------State =COLORADO--------------------------

Bank	Location	Total Assets
FIRST NB COLORADO SPRGS	COLORADO SPRINGS	$428
COLORADO SPRINGS NB	COLORADO SPRINGS	$323
FIRST COLORADO B&TC NA	DENVER	$320
DENVER NB	DENVER	$304
COLORADO NB EXCHANGE	COLORADO SPRINGS	$300
FIRST INTERSTATE BK NA	FORT COLLINS	$294
STATE		$1,969

N= 6

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-------------------------State =CONNECTICUT-------------------------

Bank	Location	Total Assets
PUTNAM TC	GREENWICH	$340
HOME B&TC	MERIDEN	$302
WESTPORT B&TC	WESTPORT	$259
NEW BRITAIN NB	NEW BRITAIN	$255
-------------		------
STATE		$1,156

N= 4

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

--------------------------State =DELAWARE---------------------------

Bank	Location	Total Assets
PNC NB	WILMINGTON	$493
MARINE MIDLAND BK (DEL) NA	WILMINGTON	$492
EQUITABLE BK OF DELAWARE	DOVER	$425
SUSSEX TC	LAUREL	$307
NBD DELAWARE BK	WILMINGTON	$291
STATE		$2,008

N= 5

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

--------------------State =DISTRICT OF COLUMBIA---------------------

Bank	Location	Total Assets
DISTRICT OF COLUMBIA NB	WASHINGTON	$453
MADISON NB	WASHINGTON	$336
SECURITY NB	WASHINGTON	$300
-----------------------		------
STATE		$1,089

N= 3

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

---------------------------State =FLORIDA---------------------------

Bank	Location	Total Assets
FIRST BKR NA	POMPANO BEACH	$466
RUTLAND BK	ST PETERSBURG	$462
CITY NB OF MIAMI	MIAMI	$445
BARNETT BK OF PASCO COUNTY	NEW PORT RICHEY	$442
PEOPLES BK OF LAKELAND	LAKELAND	$412
BARNETT BK OF POLK COUNTY	LAKELAND	$410
BARNETT BK OF NAPLES	NAPLES	$391
SUN BK OF VOLUSIA CTY	DAYTONA BEACH	$375
BANK OF MIAMI	MIAMI	$352
BARNETT BK OF MANATEE C NA	BRADENTON	$351
BARNETT BK OF LEE CTY NA	FORT MYERS	$350
BARNETT BK S WEST FL NA	ENGLEWOOD	$347
OCEAN BK OF MIAMI	MIAMI	$337
AMERICAN NB OF FLORIDA	JACKSONVILLE	$327
FIRST NB OF CLEARWATER	CLEARWATER	$326
LANDMARK BK OF TAMPA	TAMPA	$318
BARNETT BK OF MARION C NA	OCALA	$310
FIRST NB&TC	STUART	$310
SUN BK SOUTHWEST NAT ASSOC	CAPE CORAL	$308
SUN BK OF OCALA	OCALA	$302
SUN BK N FLORIDA NAT ASSOC	JACKSONVILLE	$285
HERNANDO SUN BK	BROOKSVILLE	$280
SUN FIRST NB OF POLK COUNTY	WINTER HAVEN	$279
FIRST NB&TC	NAPLES	$279
FLAGLER NB OF THE PALM BCHS	WEST PALM BEACH	$269
BARNETT BK OF W FLORIDA	PENSACOLA	$261

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

---------------------------State =FLORIDA---------------------------

Bank	Location	Total Assets
BARNETT BK OF HGLNDS CTY	SEBRING	$261
STATE		$9,255

N= 27

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

----------------------------State =GEORGIA----------------------------

Bank	Location	Total Assets
FIRST NB OF COBB CTY	MARIETTA	$457
FIRST NB OF COLUMBUS	COLUMBUS	$380
TRUST CO BK OF MIDDLE GA NA	MACON	$379
FIRST NB OF GAINESVILLE	GAINESVILLE	$373
TRUST CO BK - AUGUSTA NA	AUGUSTA	$264
TRUST CO BK SAVANNAH NA	SAVANNAH	$264
FIRST NB OF DALTON	DALTON	$253
STATE		$2,370

N= 7

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-----------------------------State =HAWAII-----------------------------

Bank	Location	Total Assets
CITY BK	HONOLULU	$360

N= 1

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

----------------------------State =IDAHO----------------------------

Bank	Location	Total Assets
IDAHO B&TC	POCATELLO	$463
VALLEY BK	IDAHO FALLS	$255
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STATE		$718

N= 2

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

--------------------------State =ILLINOIS---------------------------

Bank	Location	Total Assets
STATE NB	EVANSTON	$441
GARY WHEATON BK	WHEATON	$432
COMMERCIAL NB PEORIA	PEORIA	$429
CHICAGO-TOKYO BK	CHICAGO	$412
MOUNT PROSPECT ST BK	MT PROSPECT	$392
FIRST NB OF BELLEVILLE	BELLEVILLE	$385
FIRST NB OF DES PLAINES	DES PLAINES	$379
OAK PARK T&SB	OAK PARK	$375
FIRST NB OF LK FOREST	LAKE FOREST	$371
FIRST NB OF HIGHLAND PK	HIGHLAND PARK	$369
FIRST NB&TC OF BARRIN	BARRINGTON	$364
FIRST NB&TC ROCKFRD	ROCKFORD	$356
ELMHURST NB	ELMHURST	$352
FIRST NB OF SKOKIE	SKOKIE	$347
FIRST NB OF SPRINGFIELD	SPRINGFIELD	$346
BANK OF RAVENSWOOD	CHICAGO	$340
MARQUETTE NB	CHICAGO	$326
MID CITY NB OF CHICAGO	CHICAGO	$323
AMALGAMATED T&SB	CHICAGO	$322
FIRST MIDWEST BK JOLIET NA	JOLIET	$322
NORTHERN TR BK OHARE NA	CHICAGO	$321
GLENVIEW ST BK	GLENVIEW	$319
COMMERCIAL NB OF CHICAGO	CHICAGO	$313
FIRST NB OF QUAD CITIES	ROCK ISLAND	$302
COLONIAL B&TC	CHICAGO	$292
SOUTH HOLLAND T&SB	SOUTH HOLLAND	$288

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

---------------------------State =ILLINOIS---------------------------

Bank	Location	Total Assets
PIONEER B&TC	CHICAGO	$286
ILLINOIS NB OF SPRINGFLD	SPRINGFIELD	$281
FIRST NB OF JOLIET	JOLIET	$278
FIRST NB OF ELGIN	ELGIN	$273
DROVERS BK OF CHICAGO	CHICAGO	$272
FIRST ILLINOIS BK OF WILME	WILMETTE	$272
MANUFACTURERS BK	CHICAGO	$268
FORD CITY B&TC	CHICAGO	$260
STATE		$11,408

N= 34

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

---------------------------State =INDIANA---------------------------

Bank	Location	Total Assets
ST JOSEPH B&TC	SOUTH BEND	$476
MERCHANTS NB OF MUNCIE	MUNCIE	$380
BANK OF INDIANA NA	GARY	$379
PURDUE NB OF LAFAYETTE	LAFAYETTE	$378
MERCANTILE NB OF INDIANA	HAMMOND	$357
VALLEY AMERICAN B&TC	LOC SOUTH BEND	$350
LAFAYETTE NB	LAFAYETTE	$342
CALUMET NB	HAMMOND	$333
NATIONAL CITY BK OF EVANSVIL	EVANSVILLE	$325
COMMERCE AMERICA BKG CO	JEFFERSONVILLE	$301
SECOND NB OF RICHMOND	RICHMOND	$296
UNION B&TC	KOKOMO	$287
NORTHERN IND B&TC	VALPARAISO	$270
IRWIN UNION B&TC	COLUMBUS	$269
MERCHANTS NB TERRE HAUTE	TERRE HAUTE	$269
FIRST B&TC	SPEEDWAY	$266
FIRST NB EAST CHICAGO	EAST CHICAGO	$265
ANDERSON BKG CO	ANDERSON	$259
FIRST MIDWEST B&TC	NEW ALBANY	$256
FIRST NB OF BLOOMINGTON	BLOOMINGTON	$252
STATE		$6,310

N= 20

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-----------------------------State =IOWA------------------------------

Bank	Location	Total Assets
FIRST INTERSTATE BK NA	DES MOINES	$372
NATIONAL BK OF WATERLOO	WATERLOO	$347
SECURITY NB SIOUX CITY	SIOUX CITY	$344
VALLEY NB	DES MOINES	$306
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STATE		$1,369

N= 4

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-----------------------------State =KANSAS-----------------------------

Bank	Location	Total Assets
FIRST NB OF TOPEKA	TOPEKA	$463
SECURITY BK OF KC	KANSAS CITY	$461
COMMERCIAL NB OF KNS CTY	KANSAS CITY	$332
MISSION BK	MISSION	$331
UNION NB OF WICHITA	WICHITA	$320
VALLEY VIEW ST BK	OVERLAND PARK	$268
KANSAS ST B&TC	WICHITA	$251
MIDAMERICAN B&TC	ROELAND PARK	$250
STATE		$2,676

N= 8

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

---------------------------State =KENTUCKY---------------------------

Bank	Location	Total Assets
PIKEVILLE NB&TC	PIKEVILLE	$350
CENTRAL B&TC	LEXINGTON	$324
FARMERS B&TC CAPITAL TC	FRANKFORT	$310
CITIZENS B&TC	PADUCAH	$290
OWENSBORO NB	OWENSBORO	$285
PEOPLES FIRST NB&TC	PADUCAH	$266
STATE		$1,825

N= 6

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-------------------------State =LOUISIANA-------------------------

Bank	Location	Total Assets
JEFFERSON GUARANTY BK	METAIRIE	$493
LOUISIANA B&TC	SHREVEPORT	$448
CENTRAL BK	MONROE	$446
FIRST NB OF LAFAYETTE	LAFAYETTE	$432
GUARANTY B&TC	ALEXANDRIA	$410
RAPIDES B&TC	ALEXANDRIA	$378
WHITNEY NB IN JEFF PRSH	METAIRIE	$344
TERREBONNE B&TC	HOUMA	$317
AMERICAN B&TC	NEW ORLEANS	$313
PIONEER B&TC	SHREVEPORT	$313
FIRST NB	COVINGTON	$300
FIRST NB OF HOUMA	HOUMA	$269
CITIZENS B&TC	THIBODAUX	$269
-----------------------		------
STATE		$4,732

N= 13

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-----------------------------State =MAINE-----------------------------

Bank	Location	Total Assets
KEY BK SOUTHERN MAINE	PORTLAND	$387

N= 1

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

--------------------------State =MARYLAND--------------------------

Bank	Location	Total Assets
FARMERS & MECHANICS NAT BANK	FREDERICK	$379
FARMERS NB OF MARYLAND	ANNAPOLIS	$282
----------------------------		----
STATE		$661

N= 2

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

------------------------State =MASSACHUSETTS------------------------

Bank	Location	Total Assets
UNION NB	LOWELL	$483
SHAWMUT COUNTY BK NA	CAMBRIDGE	$476
SHAWMUT FIRST B&TC	SPRINGFIELD	$466
BANK OF BOSTON-WESTERN MA NA	SPRINGFIELD	$446
CAPITOL B&TC	BOSTON	$435
BANK OF NEW ENGLAND - HANCO	QUINCY	$425
CAPE COD B&TC	HYANNIS	$409
BAYBANK SOUTHEAST NA	PLYMOUTH	$393
PLYMOUTH HOME NB	BROCKTON	$386
BAYBANK BOSTON NA	BOSTON	$385
SHAWMUT COMMUNITY BK NA	FRAMINGHAM	$375
MECHANICS BK	WORCESTER	$368
FIRST BRISTOL CTY NB	TAUNTON	$354
BANK OF NEW ENGLAND NA BAY	LAWRENCE	$323
FIRST AGRICULTURAL BK	PITTSFIELD	$322
BANK OF BOSTON-BRISTON NA	NEW BEDFORD	$317
DURFEE ATTLEBORO BK	FALL RIVER	$311
SECURITY NB	LYNN	$303
GUARANTY FIRST TC	WALTHAM	$272
FRAMINGHAM TC	FRAMINGHAM	$271
COOLIDGE B&TC	WATERTOWN	$255
STATE		$7,775

N= 21

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

--------------------------State =MICHIGAN----------------------------

Bank	Location	Total Assets
FIRST OF AMERICA BK-CENTRAL	LANSING	$444
MICHIGAN NB - N METRO	TROY	$420
FIRST OF AMERICA BK - ANN AR	ANN ARBOR	$414
AMERICAN NB&TC OF M	KALAMAZOO	$412
CHEMICAL B&TC	MIDLAND	$411
FMB-FIRST MICHIGAN BK	ZEELAND	$401
BANK OF COMMERCE	HAMTRAMCK	$389
NEWCENTURY BK-BAY CITY NA	BAY CITY	$370
MICHIGAN NB - W METRO	LIVONIA	$348
WYANDOTTE SVG BK	WYANDOTTE	$348
CITY B&TC NA	JACKSON	$342
MICHIGAN NB - CENTRAL	WYOMING	$340
COMERICA BK - JACKSON NA	JACKSON	$339
MICHIGAN BK - PORT HURON	PORT HURON	$334
MONROE B&TC	MONROE	$330
COMERICA BK - WARREN NA	WARREN	$330
COMERICA BK - HACKLEY NA	MUSKEGON	$326
MICHIGAN NB - MID MI	FLINT	$324
NEWCENTURY BK-FRANKENMUTH	FRANKENMUTH	$308
NBD ANN ARBOR NA	ANN ARBOR	$299
BANK OF LANSING	LANSING	$298
OLD KENT BK GRAND TRAVERSE	TRAVERSE CITY	$293
CITIZENS TR	ANN ARBOR	$292
LIBERTY ST B&TC	HAMTRAMCK	$280
MOUNT CLEMENS BK	MT CLEMENS	$259
OLD KENT BK SOUTHWEST	NILES	$258

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

---------------------------State =MICHIGAN-----------------------------

Bank	Location	Total Assets
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STATE		$8,909

N= 26

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

---------------------------State =MINNESOTA---------------------------

Bank	Location	Total Assets
NATIONAL CITY BK	MINNEAPOLIS	$440
FIRST BK NA - DULUTH	DULUTH	$361
NORWEST BK MIDLAND NA	MINNEAPOLIS	$356
FIRST BK NA LAKE	MINNEAPOLIS	$351
FIRST NB OF HOPKINS	HOPKINS	$304
FIRST EDINA NB	EDINA	$303
NORWEST BK BLOOMINGTON NA	BLOOMINGTON	$285
FIRST SOUTHDALE NB	EDINA	$277
FIRST BK EAST NA	ST PAUL	$261
NORWEST BK DULUTH NA	DULUTH	$254
STATE		$3,192

N= 10

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

--------------------------State =MISSISSIPPI--------------------------

Bank	Location	Total Assets
PEOPLES B&TC	TUPELO	$401
FIRST MISSISSIPPI NB	HATTIESBURG	$397
UNITED SOUTHERN BK	CLARKSDALE	$311
NATIONAL BK OF CMRC OF MS	STARKVILLE	$287
PEOPLES BK MISSISSIPPI NA	UNION	$256
STATE		$1,652

N= 5

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-------------------------State =MISSOURI-------------------------

Bank	Location	Total Assets
BOATMENS NB OF SPRINGFLD	SPRINGFIELD	$482
CENTERRE BK OF KC NA	KANSAS CITY	$443
CENTRAL TR BK	JEFFERSON CITY	$421
COMMERCE BK OF SPRINGFIELD	SPRINGFIELD	$377
GRAVOIS MERCANTILE BK	AFFTON	$273
AMERICAN NB OF ST JOSEPH	ST JOSEPH	$269
LEMAY B&TC	LEMAY	$265
INVESTORS FIDUCIARY TC	KANSAS CITY	$261
METRO NORTH ST BK	KANSAS CITY	$258
BOONE CTY NB OF COLUMBIA	COLUMBIA	$254
STATE		$3,303

N= 10

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

---------------------------State =MONTANA---------------------------

Bank	Location	Total Assets
FIRST BK NA - BILLINGS	BILLINGS	$378
FIRST INTERSTATE BK	BILLINGS	$298
FIRST NB OF GREAT FALLS	GREAT FALLS	$261
----------------------		----
STATE		$937

N= 3

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

---------------------------State =NEBRASKA---------------------------

Bank	Location	Total Assets
NATIONAL BK OF CMRC TR & SA	LINCOLN	$487

N= 1

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-------------------------State =NEVADA---------------------------

Bank	Location	Total Assets
SECURITY BK OF NEVADA	RENO	$461

N= 1

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

------------------------State =NEW HAMPSHIRE------------------------

Bank	Location	Total Assets
BANK OF NEW HAMPSHIRE NA	MANCHESTER	$472
BANKEAST	MANCHESTER	$451
BANKEAST SVG B&TC	ROCHESTER	$343
MERCHANTS NB MANCHESTER	MANCHESTER	$306
INDIAN HEAD B&TC	PORTSMOUTH	$267
NASHUA TC	NASHUA	$264
STATE		$2,103

N= 6

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

---------------------------State =NEW JERSEY---------------------------

Bank	Location	Total Assets
FIRST FIDELITY BK NA W JRSY	RARITAN TWP	$466
UNITED NB	PLAINFIELD	$451
HUDSON UNITED BK	UNION CITY	$398
OCEAN CTY NB OF PT PLEASANT	POINT PLEASANT	$343
SOMERSET TC	BRIDGEWATER TWP	$321
MARINE NB	WILDWOOD	$297
BANK OF MID-JERSEY	BORDENTOWN TWP	$287
UNITED JERSEY BK NORTHWEST	DOVER	$284
AMBOY-MADISON NB	OLD BRIDGE TWP	$283
PEOPLES BANK NA	BELLEVILLE	$276
BROAD STREET NB OF TREN	TRENTON	$256
BROADWAY B&TC	PATERSON	$254
BROAD NB	NEWARK	$253
MIDLAND B&TC	PARAMUS	$250
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STATE		$4,419

N= 14

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-------------------------State =NEW MEXICO-------------------------

Bank	Location	Total Assets
FIRST INTERSTATE BK	ALBUQUERQUE	$430
FIRST NB OF DONA ANA CTY	LAS CRUCES	$265
UNITED NEW MEXICO BK AT	ALBUQUERQUE	$255
------------------------		----
STATE		$950

N= 3

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

---------------------------State =NEW YORK---------------------------

Bank	Location	Total Assets
KEY BK OF SOUTHEASTERN NY NA	CHESTER	$493
ROYAL B&TC	NEW YORK	$487
BANK OF COMMERCE	NEW YORK	$449
EXTEBANK	STONY BROOK	$443
BANCO CENTRAL OF NEW YORK	NEW YORK	$432
MERCHANTS BK OF NEW YORK	NEW YORK	$411
NATIONAL B&TC NRWICH	NORWICH	$405
FIRST NB OF GLENS FALLS	GLENS FALLS	$392
NORTH FORK B&TC	MATTITUCK	$387
SCARSDALE NB&TC	SCARSDALE	$340
GLENS FALLS NB&TC	GLENS FALLS	$287
NANUET NB	NANUET	$282
CHINESE AMERICAN BK	NEW YORK	$280
SUFFOLK CTY NB OF RIVERHEAD	RIVERHEAD	$274
TOMPKINS COUNTY TC	ITHACA	$262
STATE		$5,624

N= 15

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-----------------------State =NORTH CAROLINA-----------------------

Bank	Location	Total Assets
HIGH POINT B&TC	HIGH POINT	$272
SECURITY B&TC	SALISBURY	$263
---------------		----
STATE		$535

N= 2

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

------------------------State =NORTH DAKOTA------------------------

Bank	Location	Total Assets
FIRST BK ND NA FARGO	FARGO	$275

N= 1

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

----------------------------State =OHIO----------------------------

Bank	Location	Total Assets
PARK NB	NEWARK	$499
CHASE BK OF OHIO	MENTOR	$391
SOCIETY BK NA	SPRINGFIELD	$380
SOCIETY BK	COLUMBUS	$368
CENTRAL TC	NEWARK	$367
SECOND NB OF WARREN	WARREN	$359
ELYRIA SVG & TR NB	ELYRIA	$358
CENTRAN BK OF AKRON	AKRON	$340
LORAIN COUNTY BK	ELYRIA	$330
MID AMERICAN NB&TC	NORTHWOOD	$320
BANK ONE MANSFIELD	MANSFIELD	$319
SECURITY NB&TC	SPRINGFIELD	$317
SYLVANIA BK	SYLVANIA	$303
BANK ONE MILFORD NA	MILFORD	$294
OLD PHOENIX NB OF MEDINA	MEDINA	$267
LORAIN NB	LORAIN	$251
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STATE		$5,463

N= 16

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

--------------------------State =OKLAHOMA---------------------------

Bank	Location	Total Assets
FOURTH NB OF TULSA	TULSA	$472
F&M B&TC	TULSA	$346
UNITED OKLAHOMA BK	OKLAHOMA CITY	$323
FOUNDERS B&TC	OKLAHOMA CITY	$288
UTICA NB&TC	TULSA	$288
FIRST NB BARTLESVILLE	BARTLESVILLE	$274
UNION B&TC	OKLAHOMA CITY	$262
FIRST NB&TC MC ALES	MC ALESTER	$257
STATE		$2,510

N= 8

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

----------------------------State =OREGON----------------------------

Bank	Location	Total Assets
WESTERN BK	COOS BAY	$303
OREGON FIRST BK	PORTLAND	$274
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STATE		$577

N= 2

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

------------------------State =PENNSYLVANIA-------------------------

Bank	Location	Total Assets
FARMERS FIRST BK	LITITZ	$495
SOUTHWEST NB OF PA	GREENSBURG	$434
SAVINGS & TC OF PA	INDIANA	$412
JOHNSTOWN B&TC	JOHNSTOWN	$399
FIRST NB OF MERCER CTY	GREENVILLE	$394
UNION NB&TC	SOUDERTON	$388
FRANKFORD TC	PHILADELPHIA	$367
FIRST NB&TC	WASHINGTON	$363
NATIONAL BK OF BOYERTOWN	BOYERTOWN	$340
MCDOWELL NB	SHARON	$336
CHELTENHAM BK	CHELTENHAM	$329
LEBANON VALLEY NB	LEBANON	$319
NATIONAL BK OF THE CMNWLTH	INDIANA	$302
FARMERS B&TC	HANOVER	$287
THIRD NB&TC	SCRANTON	$282
PENN SECURITY B&TC	SCRANTON	$277
ADAMS COUNTY NB	CUMBERLAND TWP	$264
PEOPLES FIRST NB&TC	HAZLETON	$257
STATE		$6,245

N= 18

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

------------------------State =RHODE ISLAND-------------------------

Bank	Location	Total Assets
CITIZENS TC	PROVIDENCE	$396

N= 1

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-----------------------State =SOUTH CAROLINA-----------------------

Bank	Location	Total Assets
NATIONAL BK OF SC	SUMTER	$312

N= 1

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

------------------------State =SOUTH DAKOTA--------------------------

Bank	Location	Total Assets
FIRST NB IN SIOUX FLS	SIOUX FALLS	$252

N= 1

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-------------------------State =TENNESSEE-------------------------

Bank	Location	Total Assets
COMMERCIAL & IND BK	MEMPHIS	$448
MID-SOUTH B&TC	MURFREESBORO	$393
VALLEY FIDELITY B&TC	KNOXVILLE	$363
PIONEER BK	CHATTANOOGA	$337
THIRD NB IN KNOXVILLE	KNOXVILLE	$322
FIRST AMERICAN NB JACKSN	JACKSON	$317
WILLIAMSON COUNTY BK	FRANKLIN	$289
STATE		$2,469

N= 7

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

----------------------------State =TEXAS----------------------------

Bank	Location	Total Assets
INTERFIRST BK SAN ANTONIO NA	SAN ANTONIO	$499
INTERFIRST BK FANNIN	HOUSTON	$489
FIRST CITY NB OF MIDLAND	MIDLAND	$489
FIRST CITY NB BEAUMONT	BEAUMONT	$487
REPUBLICBANK WACO NA	WACO	$483
TEXAS COMMERCE BK-DALLAS NA	DALLAS	$471
INTERFIRST BK TYLER NA	TYLER	$469
TEXAS AMERICAN BK DALLAS	DALLAS	$464
MBANK WICHITA FALLS NA	WICHITA FALLS	$454
TEXAS COMMERCE BK MCALLEN NA	MC ALLEN	$441
CULLEN CENTER B&TC	HOUSTON	$439
WESTERN BK WESTEIMER	HOUSTON	$434
MBANK ABILENE NA	ABILENE	$428
TEXAS COMMERCE BK - BROWNSVL	BROWNSVILLE	$413
FIRST CITY NB OF TYLER	TYLER	$406
INTERFIRST BK WICHITA FLS NA	WICHITA FALLS	$406
FIRST VICTORIA NB	VICTORIA	$400
TEXAS AMERICAN BK HOUSTON NA	HOUSTON	$395
FIRST NB OF ABILENE	ABILENE	$384
REPUBLICBANK SAN ANTONIO NA	SAN ANTONIO	$383
TEXAS COMMERCE BK-ARLINGTON	ARLINGTON	$381
AMERICAN ST BK	LUBBOCK	$377
REPUBLICBANK OAK CLIFF	DALLAS	$375
FIRST CITY NB OF EL PASO	EL PASO	$370
BROADWAY NB	SAN ANTONIO	$370
FIRST ST BK	DENTON	$351

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

---------------------------State =TEXAS---------------------------

Bank	Location	Total Assets
INTERFIRST BK PARK CITIES	DALLAS	$347
ALLIED MERCANTILE BK	HOUSTON	$332
HEIGHTS ST BK	HOUSTON	$331
RIVER OAKS BK	HOUSTON	$331
MBANK WACO NA	WACO	$324
TEXAS COMMERCE BK - REAGON	HOUSTON	$315
REPUBLICBANK TYLER	TYLER	$308
FIRST CITY NB OF ARLIN	ARLINGTON	$305
TEXAS COMMERCE BK-BUMNT NA	BEAUMONT	$305
INTERFIRST BK GALVESTON NA	GALVESTON	$305
CENTRAL NB OF SAN ANGEL	SAN ANGELO	$300
CHARLES SCHREINER BK	KERRVILLE	$298
TEXAS INDEPENDENT BK	DALLAS	$286
UNITEDBANK-HOUSTON	HOUSTON	$281
REPUBLICBANK RIDGLEA	FORT WORTH	$278
UNION NB OF LAREDO	LAREDO	$277
BANK OF DALLAS	DALLAS	$275
ALLIED CHAMPIONS BK	HARRIS COUNTY	$275
REPUBLICBANK GREENVILLE AVE	DALLAS	$264
TEXAS AMERICAN BK/GALLERIA	HOUSTON	$261
INTERFIRST BK ABILENE NA	ABILENE	$260
TEXAS COMMERCE BK - SN AN NA	SAN ANGELO	$258
INTERFIRST BK IRVING	IRVING	$255
TEXAS AMERICAN BK AMARLLO NA	AMARILLO	$252
NORTH DALLAS B&TC	DALLAS	$251
INTERFIRST BK HARLINGEN NA	HARLINGEN	$250

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-----------------------------State =TEXAS-----------------------------

Bank	Location	Total Assets
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STATE		$18,582
N=	52	

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-----------------------------State =UTAH------------------------------

Bank	Location	Total Assets
CONTINENTAL B&TC	SALT LAKE CITY	$274
TRACY COLLINS B&TC	SALT LAKE CITY	$252
------------------		----
STATE		$526

N= 2

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

---------------------------State =VERMONT---------------------------

Bank	Location	Total Assets
VERMONT NB	BRATTLEBORO	$495
FIRST VERMONT B&TC	BRATTLEBORO	$456
HOWARD BK NA	BURLINGTON	$448
MERCHANTS BK	BURLINGTON	$410
------------------		------
STATE		$1,809

N= 4

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

--------------------------State =VIRGINIA--------------------------

Bank	Location	Total Assets
DOMINION BK SHNDH VLY NA	BRIDGEWATER	$430
DOMINION BK OF NTH VA NA	VIENNA	$375
FIRST VIRGINIA BK OF TIDEWTR	NORFOLK	$338
COLONIAL-AMERICAN NB	ROANOKE COUNTY	$338
FARMERS & MERCHANTS NAT BANK	WINCHESTER	$311
FIRST VIRGINIA BK SOUTHWEST	ROANOKE COUNTY	$261
PIEDMONT TR BK	COLLINSVILLE	$255
STATE		$2,308

N= 7

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

-------------------------State =WASHINGTON---------------------------

Bank	Location	Total Assets
WASHINGTON TR BK	SPOKANE	$489
FIRST INDEPENDENT BK	VANCOUVER	$301
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STATE		$790

N= 2

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

------------------------State =WEST VIRGINIA------------------------

Bank	Location	Total Assets
FIRST HUNTINGTON NB	HUNTINGTON	$431
CHARLESTON NB	CHARLESTON	$404
UNITED NATIONAL BANK	PARKERSBURG	$360
FIRST NB OF MORGANTOWN	MORGANTOWN	$278
UNION NB OF CLARKSBURG	CLARKSBURG	$275
WHEELING DOLLAR BK	WHEELING	$250
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STATE		$1,998

N= 6

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

--------------------------State =WISCONSIN--------------------------

Bank	Location	Total Assets
KELLOGG CITIZENS NB	GREEN BAY	$452
HERITAGE B&TC	WIND POINT	$328
FIRST INTERSTATE BK WI	NEW BERLIN	$311
M&I WEST SUBURBAN BK	BROOKFIELD	$293
FIRST WISCONSIN NB	SHEBOYGAN	$282
FIRST AMERICAN NB	WAUSAU	$264
MARINE BK SOUTH NA	RACINE	$261
PEOPLES MARINE BK OF GRN B	GREEN BAY	$254
VALLEY BK	APPLETON	$253
STATE		$2,698

N= 9

Insured Commercial Banks with Assets > $250 Million & < $500 Million
As of December 31, 1985
($ Amounts in Millions)

--------------------------State =WYOMING---------------------------

Bank	Location	Total Assets
FIRST INTERSTATE BK NA	CASPER	$297
NORWEST BK CASPER NA	CASPER	$261
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STATE		$558
		========
		$150,974

N= 2

TO PRESERVE THE AUTHORITY OF THE FEDERAL BANKING SUPERVISORY AGENCIES TO ARRANGE INTERSTATE ACQUISITIONS AND MERGERS FOR FAILED AND FAILING BANKS

THURSDAY, MAY 8, 1986

House of Representatives,
Subcommittee on Financial Institutions,
Supervision, Regulation and Insurance,
Committee on Banking, Finance and Urban Afairs,
Washington, DC.

The subcommittee met at 10 a.m. in room 2128, Rayburn House Office Building; Hon. Fernand J. St Germain (chairman of the subcommittee) presiding.

Present: Chairman St Germain; Representatives Annunzio, Barnard, LaFalce, Oakar, Roemer, Nelson, Wylie, McKinney, Shumway, Wortley, Parris, Bereuter, and Bartlett.

Also present: Representative Carper.

Chairman St Germain. This morning, we move into our fourth day of hearings on legislation proposed by Federal regulatory agencies dealing with emergency interstate acquisitions, as well as FSLIC recapitalization.

Our witnesses today are directly on the firing line. They deal with the day-to-day problems that have led the regulators to draft H.R. 4701 and the proposals for recapitalization of FSLIC.

In addition to the three Federal regulators, we have with us James Sexton, the banking commissioner of Texas, who supervises banks in a State hard-hit by declining fortunes in the energy industry.

We will also be receiving testimony from Under Secretary of the Treasury George Gould, who will tell just how far the administration is willing to go in providing assistance to the banks.

I am hopeful that these witnesses can give us meaningful data on the depth of the problems and how the regulators and the administration envision H.R. 4701 being employed as a solution. As I am sure this panel of witnesses recognizes, H.R. 4701 does go a very long way down the road to interstate banking. When this committee last considered and approved interstate banking in June 1985, it included provisions to assure that local communities would be served by these new institutions and that there would be safeguards against undue concentration of banking resources in any market.

At the same session, the committee approved H.R. 20, which would define banks more precisely and prevent the proliferation of nonbank banks.

In drafting H. R. 4701, the regulators have chosen to ignore the committee's previous votes on these issues that are very important, as well as a great deal of data that the Office of the Comptroller of the Currency has collected from consumers and committee groups and hearings across the Nation.

I will look forward to the witnesses telling the subcommittee whether the omission of language dealing with community commitments, problems of concentration and nonbank banks are oversights or policy decisions on the part of the regulators and the administration.

At this point, I call on our distinguished ranking minority Member, Mr. Wylie, for an opening statement.

Mr. **Wylie**. Thank you very much, Mr. Chairman. We have a very impressive panel of witnesses this morning, and I am sure that we have a long session facing us, so I will be brief.

I would like to say that we have had several days of extensive hearings addressing both the extension and enhancement of the Garn-St Germain emergency acquisition authorities and the issue of FSLIC recapitalization.

On the Garn-St Germain front, everyone seems to agree that the supervisors must have adequate tools to deal with emergency situations; however, disagreement surfaces over the question of the present need for additional authority.

Chairman Volcker told this panel yesterday that the additional powers sought by the regulators are precautionary, in his words, that they perhaps will, in the end, not have to be used, but that it would be imprudent to rely on that hope.

I am particularly interested this morning in hearing from Secretary Gould and Chairman Gray as to what they have to say about FSLIC recapitalization. On this critical issue, there does not appear to be any disagreement about the need for action. The administration, the Bank Board and the thrift industry are all on board, and I gather that the differences lies more in the assessment of the magnitude of the problem.

I will want to explore these issues more in depth this morning.

And again, thank you, Mr. Chairman, and welcome to our very distinguished panel.

Chairman **St Germain**. Thank you, Mr. Wylie.

And now I'd say to all the witnesses that, without objection, we'll put your entire statements in the record, so that I won't have to repeat that in each instance.

Our first witness will be Mr. George Gould, who is Under Secretary of Treasury for Finance.

Mr. Gould, you may proceed, and welcome to each and every one of you.

STATEMENT OF HON. GEORGE D. GOULD, UNDER SECRETARY FOR FINANCE, DEPARTMENT OF THE TREASURY

Mr. **Gould**. Mr. Chairman and members of the subcommittee. I appreciate this opportunity to present, in conjunction with Chairman Gray, the administration-Federal Home Loan Bank Board proposal to recapitalize FSLIC.

We have developed this plan in alliance with the leadership of the 12 Federal home loan banks, whose contribution of up to $3 billion of capital is at the core of this effort to strengthen FSLIC. We also have worked closely with the leaders of the thrift industry, to our substantial benefit. In particular, the officials and staffs of the U.S. League of Savings Institutions and the National Council of Savings Institutions have given us thoughtful and constructive counsel.

The result, I believe, is a popular proposal that will strengthen FSLIC, free FSLIC to resolve its problem cases more expeditiously and increase depositor confidence.

This subcommittee is well-informed about the problems of FSLIC and the savings and loan industry, so I will not dwell long on the need for this proposal. Nevertheless, a brief statement of need may give you the context within which we developed this plan.

Estimates of the size of the problem confronting FSLIC vary widely. Most range from about $10 billion to $25 billion. The crux of the problem is that the assistance costs, even under the most conservative estimates, exceed FSLIC's present financial reserves of about $6 billion.

If we do not recapitalize the fund, FSLIC would need to continue to defer the resolution of many problem S&L's. This deferral would only increase the fund's ultimate costs. With the appropriate financial and organizational resources, the Federal Home Loan Bank Board and FSLIC could set more ambitious targets and resolve more cases more quickly.

This is a propitious time to act. The attractive interest rate environment provides the ideal window of opportunity to move ahead vigorously to deal with ailing S&L's.

Action now on the thrift industry problem should reaffirm depositor confidence in the health and stability of depository institutions and the viability of the deposit insurance funds. Furthermore, prompt handling of the most debilitated S&L's should help healthy S&L's by lowering their cost of deposits, which has been bid up by the feeble S&L's call for funds at any price.

If we do not strengthen FSLIC now, we may place the S&L industry at considerable risk in the future, should interest rates rise significantly.

Six major objectives guide our FSLIC recapitalization proposal:

First, the proposal balances the financing burden between the Federal home loan banks and the S&L's. The cost will be borne entirely by them without any taxpayer funds.

Second, we transfer funds from these sources to FSLIC through a combination of assessments and stock purchases to avoid a negative budgetary effect. I will explain more about this stock investment later in this statement.

Third, this plan can supply up to $25 to $30 billion to FSLIC over approximately the next 5 to 6 years, with approximately $15 billion available in the first 3 years. Given FSLIC's organizational constraints, this infusion probably represents the maximum level of resources that FSLIC can effectively use to resolve problem cases. Because the plan is flexible by design, FSLIC need not draw this full amount, if the size of the problem turns out to be at the low end of the estimated range.

Fourth, the funds transfer to FSLIC is not dependent on any U.S. Government or FSLIC guarantee of debt.

Fifth, the proposal seeks to accommodate the FHL banks' concerns about a substantial increase in their debt costs and the accounting treatment of their capital contribution. It also recognizes that the allocation of the contributions among these FHL banks needs to take into account their proportions of FDIC-insured members.

Sixth, this plan addresses the S&L's industry overwhelming concern—the continuation of the FSLIC special assessment—by creating the substantial likelihood that this extra assessment can be phased out over the next 5 years. We believe it is important to show the high probability of eliminating this extra premium over time, because it is a heavy burden on the industry, and because we would like to decrease the incentive for healthy thrifts to switch from FSLIC to FDIC insurance.

In essence, the recapitalization proposal leverages both the current earned surplus of the FHL banks and future FSLIC assessments to get equity funds into FSLIC more quickly. A separate corporation, capitalized by the FHL banks will undertake a specially designed financing over time to channel equity investments into FSLIC. The proposal contains important safeguards to ensure that both the principal and interest of the Financing Corporation's special borrowings will be repaid.

Most of the Financing Corporation's investment in FSLIC, however, will be in the form of nonredeemable capital certificates that will never need to be repaid. The remaining investment of the Financing Corporation in FSLIC will be in the form of nonvoting capital stock that may or may not be repaid, with or without a return, depending upon FSLIC's financial performance.

The key elements of the proposal are as follows:

The Federal Home Loan Bank Board charters a "Financing Corporation," capitalized with no more than $3 billion of the Federal home loan banks' surplus over about 5 to 6 years. This Financing Corporation will not have its own paid staff.

The Financing Corporation then borrows approximately $10 billion through long-term bonds over these 5 to 6 years. It assures payment of the bonds' principal, without passing any debt obligations to FSLIC, by buying approximately $2 billion of long-term, zero-coupon instruments, which will equal the bond principal upon maturity. The Corporation will be subject to stringent limits on activities, leverage and life.

The Financing Corporation then invests the same amount the FHL banks invested in it, a maximum of $3 billion, in nonvoting capital stock of FSLIC and an additional $8 billion or more in nonredeemable capital certificates of FSLIC.

FSLIC employs some of its assessment income to pay dividends to the Financing Corporation, which uses this money to pay interest on its bonds.

FSLIC uses the rest of its assessment income to add to its case resolution resources. The combination of equity and assessments enables FSLIC to deploy about $15 billion in case resolution funds in the first 3 years and about $10 billion more over the next 2 years.

The special assessment can be phased out gradually over 5 years while still securing this $25 billion for FSLIC.

The Financing Corporation would repay its debt principal around 2020. FSLIC would not be repaying this debt nor would it be contingently liable for it.

FSLIC would retire its outstanding stock, held by the Financing Corporation, after the Corporation repays all its debt. The payoff of both the book value and a return on this stock upon retirement would be totally dependent upon FSLIC's financial performance. After 1996, if FSLIC's reserve-to-deposit ratio reaches certain levels, FSLIC would make contributions to an equity return account. This account, which would be held by FSLIC until the Financing Corporation paid off all its debt, would be the sole source of funds for paying off the FSLIC stock. The nonredeemable capital certificates issued by FSLIC would be extinguished without any repayment.

The Corporation must sunset by 2026, or earlier, if it has repaid all its debt. Its ability to borrow net new funds would end in 1996.

There is a diagram on the right, which I would be happy to deal with during the question-and-answer period, which illustrates how the proposal would operate.

This proposal incorporates some flexibility in the event the industry problem is larger than estimated and FSLIC needs more funds. Alternatively, the structure could employ less funds from the FHL Banks and the industry, if the problem proves less costly.

This proposal is structured carefully to create fair and appropriate budgetary receipts that will offset FSLIC's case resolution costs; these costs are scored as budgetary outlays.

Assessments always have been counted as budgetary receipts. The equity investment in FSLIC also should be counted as a budget receipt for four primary reasons.

First, FSLIC would never repay, under any circumstances, the bulk of the funds invested in it by the Financing Corporation. These nonredeemable capital certificates will represent between $8 billion to $12 billion of the funds invested in FSLIC.

Second, FSLIC's responsibility to pay off the nonvoting capital stock owned by the Financing Corporation is completely dependent on FSLIC's financial condition. Its reserve-to-deposit ratio is what we use to measure that.

The amount of this stock is exactly equal to the amount of capital the FHL Banks have contributed to the Financing Corporation. There is no assurance that the Financing Corporation, and hence the FHL Banks, will get this equity investment back.

Third, like other forms of equity, the possible return on this capital stock investment in FSLIC is dependent on higher levels of FSLIC's financial performance. Even then, the Federal Home Loan Bank Board must approve this return on investment.

Fourth, while this transaction does involve a borrowing—and borrowings are not budget receipts—the Financing Corporation, not FSLIC, does the borrowing. The Financing Corporation, not FSLIC, would be responsible for paying off the principal on this debt. Indeed, the proposed legislation will state that the Financing

Corporation's debt is not an obligation of the U.S. Government or FSLIC. The payment of principal on the Financing Corporation's debt is assured by its purchase of zero-coupon instruments.

To summarize the benefits of this FSLIC recapitalization proposal:

FSLIC will be able to employ about $25 billion over 5 years to resolve its caseload of problem thrifts. These funds should be transferred to FSLIC about as quickly as we can reasonably expect the FSLIC to handle its problem cases effectively.

By handling insolvent S&L's more expeditiously, FSLIC can halt the expansion of the problem.

The certain availability of about $25 billion for FSLIC should increase depositor confidence, and this confidence, plus the sale, merger or liquidation of the weakest S&L's, should help the industry lower its cost of funds.

The FSLIC recapitalization burden will be shared fairly between the S&Ls and the FHL Banks. Moreover, the contributions are structured to minimize the adverse effects on both. There is a high probability that the special assessment on the S&L industry can be phased out over 5 years.

Regular FHL Bank debt should be protected from possibly higher borrower spreads.

The legislation requiring the FHL Banks' investment in the Financing Corporation would resolve the FHL Banks' concerns about fulfilling fiduciary duties.

The equity nature of the FHL Banks' capital contribution to the Financing Corporation—which links the repayment of the stock and the possibilities of higher returns to FSLIC's financial performance—should ease the FHL Banks' accounting treatment. Moreover, it gives the FHL Banks an additional future economic interest in the condition of FSLIC and the industry.

The formula that governs the FHL Banks' capital contribution will accommodate the FHL Banks with a large percentage of FDIC-insured members.

Finally, the flexibility built into the proposal permits the Federal Home Loan Bank Board to raise a range of funds for FSLIC, depending upon FSLIC's need.

Mr. Chairman, I understood that these hearings also are intended to address H.R. 4701, the Financial Institutions Emergency Acquisitions Amendments of 1986.

The administration strongly supports H.R. 4701. The emergency acquisition provisions you authorized in 1982 have proven most helpful by reducing costs for the insurance funds, helping to maintain financial services to communities, and assisting to secure the stability of the financial system. We believe that H.R. 4701 furthers these ends even more.

My prior statements before this subcommittee emphasized some of the benefits we believe would be served by a liberalization of the emergency acquisition provisions of the Garn-St Germain Act. The banking regulators are in a better position than I to explain how the particular features of H.R. 4701 are designed to suit their emergency needs. I know that Comptroller of the Currency Clarke will address this subject in detail today, including minor technical suggestions.

I would, however, be pleased to assist the subcommittee in any way you consider constructive to secure the enactment of H.R. 4701.

In conclusion, I would like to say that I expect the administration will offer you the FSLIC recapitalization bill language within a matter of days. It is in the final phase of our clearance process. After you receive this proposed legislation, I would, of course, be pleased to address any questions in any manner that would be most beneficial to you.

I know we share a deep interest in strengthening FSLIC as promptly as possible. The need is clear; the time is auspicious. The sooner this proposal becomes law, the sooner FSLIC can move its case resolution effort into high gear and the sooner depositors will know that their Government—the Congress and the executive branch—can act together to protect the safety and soundness of the financial system.

I would be pleased to try to answer any questions you might have.

[The prepared statement of Mr. Gould may be found at the conclusion of this day's hearing in the appendix.]

Chairman St Germain. Thank you, Mr. Gould.

At this time we will hear from Hon. Edwin J. Gray, Chairman of the Federal Home Loan Bank Board.

STATEMENT OF HON. EDWIN J. GRAY, CHAIRMAN, FEDERAL HOME LOAN BANK BOARD

Mr. Gray. Thank you, Mr. Chairman, and distinguished members of the subcommittee.

We are very pleased you are holding this hearing because it once again provides me the opportunity to relate why I believe it is so absolutely important for the Congress to consider, and pass, the FSLIC recapitalization program and the supervisory enforcement measures, which we are proposing.

This is my fourth calendar year as Chairman of the Federal Home Loan Bank Board. During these years we have seen a steady decline in the resources of the thrift deposit insurance fund, relative to the nature and magnitude of the mounting problems we have faced. I wish it had been otherwise.

The Bank Board has taken many regulatory measures to deal with very significant challenges along the way. I have kept you fully apprised of the range of difficulties we have confronted, the progress we have made in dealing with them, as well as the strident, sometimes furious opposition some of our regulatory initiatives have generated in some quarters of the thrift industry.

Nevertheless, we have stuck to our guns—especially when the going has been the toughest—and more and more of the leadership of the industry has come to appreciate, I think, the need for the tough regulatory approaches we have taken, even though some of the boldest regulations were not met with popular acclaim generally when they were initiated.

Regulators who choose to try to win popularity contests with those they regulate—through inaction and failure to address forthrightly clear and present dangers to the deposit insurance system—

can only fail, ultimately, to serve the public interest as well as the continuing best interest of the industries they are called upon to regulate.

The residual effects of excessive growth and excessive risk-taking among too many thrift managements, especially in 1983 and 1984, when thrift deregulation was too often seen as a license to engage in heavy excesses on far too little capital, are with us today.

We have learned painful lessons along the way. To some, especially some in key positions in Government, there was a failure to recognize that deregulation necessitates authorization of the human resources necessary to monitor and supervise insured institutions closely, especially in a deregulated operating environment.

Until the middle of 1985, when the Bank Board simply took matters into its own hands—after having been repeatedly denied the field examination resources we needed to look into the condition of institutions which were knee-deep in problems or which have since failed—until then, we were in the position of having to try to regulate for safety and soundness with at least one of our hands tied behind our backs.

Today, as we discuss the need for recapitalization of the FSLIC, we cannot but keep in mind the heavy price which must now be paid to extricate ourselves from the circumstances which exist; namely, inadequate insurance reserves to deal with the nature and magnitude of the problems we face in seeking to resolve present and anticipated thrift failures.

Recapitalization of the insurance fund was a necessity last year. It is simply a critical fact of life, in my view, that it must be dealt with this year by the Congress, given the hundreds of cases which must be resolved through additional FSLIC assistance.

I am convinced that nothing, simply nothing, is more important than this if we are to begin to deal with the problems we face in a truly adequate manner and thereby restore the fullest possible measure of public confidence to the Nation's thrift system.

It has been my deep conviction that under these continuing, worsening circumstances for the condition of the FSLIC, that strong doses of regulatory discipline be injected into the thrift system.

The initiatives taken by the Bank Board to deal with excessive growth and excessive risk-taking on the part of too many in the industry began, as you know, with our brokered funds regulation early in 1984. When the Federal Judiciary overruled the FDIC and FSLIC on this matter, we sought other measures, such as the very controversial net worth growth regulation and direct investment regulation. We hunkered down for battle and we won.

Those regulations achieved their intended results. And while they were distinctly unpopular at the time they were proposed and adopted, they represented a turning point in a new direction. Yes, in the right direction.

But the residual effects of previous excesses haunt us and, yes, plague the insurance fund today. This is why we desperately need the wherewithal which FSLIC recapitalization offers us now.

On the other hand, recapitalization of the thrift insurance fund cannot serve as more than another interim device, cannot serve as an ultimate solution unless we who govern the FSLIC have the full range of regulatory tools affirmed by statute that we need, as well as all the highly trained examination and supervisory oversight personnel we need, to assure to the best of our ability that we do not find ourselves ever again in the same position we were in during the early 2 years of thrift deregulation, 1983 and 1984, which came so swiftly on us. The enforcement tools we are requesting I believe will go a long way to assist us in this regard well out into the future.

In the meantime, we have made great progress, as I indicated earlier. Our supervisory enforcement office is now separate and reports directly to the Bank Board. In little over a year and a half our field examination force will have doubled by the end of this year.

Because we transferred these responsibilities to the Federal home loan bank districts, we are able to increase these human resources as needed and to close the revolving door of examiner turnover because we are able now to pay enough to attract and retain good people. Our supervisory staffs in the Federal home loan bank districts will have at least tripled in size by the end of this year.

We have proposed regulations now out for comment to gradually raise over 6 years the minimum capital requirements of the industry. We have built into that proposal risk-based elements which require substantially greater reserves for riskier types of endeavors as well as rewards for those who guard the resources of their institutions against the ravages of interest rate risk. And more will be done through the regulatory and supervisory process in this regard.

The kind of long-term FSLIC recapitalization proposal we have fashioned utilizes both the resources of individual thrift institutions themselves as well as a portion of the retained earnings stream of the Federal home loan banks, which are themselves owned by their member thrift institution.

It is particularly important that continuing regulatory discipline be maintained in the thrift system so that we will never have to go to this well again because the well won't be there to utilize again given the very long-term nature of this recapitalization proposal.

I would like to make several comments which I consider very relevant to any discussion of the FSLIC recapitalization plan before you, as outlined in my written testimony.

Some are saying the problem—that is to say, the cost of resolution of cases that we have estimated to be in the neighborhood of $16 billion is too high. They think such costs will be much less. I hope they are right and that we are wrong, but we won't know until the case resolutions actually play themselves out.

The recapitalization plan we have devised is fashioned to deal with either scenario. Indeed, it can deal with problems from the lowest estimated cost up to those as high as $25 billion over the next 5 years or so. If resolution costs are less than we think they may be, we need only utilize less of the retained earnings stream of the Federal home loan banks to make the plan serve its purpose. The numbers in the plan adapt to whatever needs are dictated for the resolution of cases by the FSLIC up to some $25 billion.

Second, some are saying there should be a statutory phaseout of the special assessment over 5 years. The Bank Board strongly opposes this argument because it would have the effect of eliminating our statutory one-eighth of 1 percent special assessment authority. We strongly believe it is in the Bank Board's best interest, and even more importantly the best interest of the Congress and the Treasury, to assure that this authority is retained in statute so as to give us the flexibility we need under changing circumstances to make adjustments as necessary in carrying out the recapitalization plan.

We feel very strongly that in order for the plan to work the capital markets, which are intimately involved in the plan, will rely on this continuing flexibility which can adapt to circumstances we cannot possibly foresee today well out into the future, given the projections needed by bondholders to always assure they receive ongoing interest dividends supplied by the FSLIC through the years.

There are other concerns which must be attended to in any consideration of the recapitalization plan, including the need, in my view, to maintain the liability base—that is to say, the deposit base—from which insurance premiums are generated by the FSLIC in both the short and long term.

In summary, my written testimony makes clear the views of the Bank Board on these and other matters.

Again, may I respectfully reiterate to all of you on the subcommittee that the recapitalization of the FSLIC is of absolutely critical importance to our thrift deposit insurance system and to the preservation of the fullest public confidence by savers in our insured thrift institutions.

I urge your consideration of it and favorable action on it at the earliest possible time.

Thank you very much, and I will be happy to try to answer any questions you may have.

[The prepared statement of Mr. Gray may be found at the conclusion of this day's hearing in the appendix.]

Chairman ST GERMAIN. I would say to Honorables Gray and Gould that when we come to the questioning you may want to address this or, if not at that point, please be helpful to the committee. We don't have the actual plan before us for recapitalization, but the fact of the matter is that though the plan isn't before us it seems as though some of the trade organizations already have hangups about it, and both of you addressed this but yet I wonder if you did address it.

The U.S. League seems to feel that the amount of money or projections by the administration and the Board are too high and that would result in long-term high interest costs that perhaps are more than they should be.

Listening to you gentlemen, you seem to imply that that will not be the case. So when we get back to you during the questioning period, if either of you can help us with this dilemma, fine. If you can't at this point, we can wait, but that is going to be, I think, a very important element that will be addressed by many members of the subcommittee and full committee.

So we have to be prepared for that one.

Now we will hear from Mr. William Seidman, who is Chairman of the Federal Deposit Insurance Corporation.

STATEMENT OF HON. L. WILLIAM SEIDMAN, CHAIRMAN, FEDERAL DEPOSIT INSURANCE CORPORATION

Mr. **Seidman**. Thank you, Mr. Chairman, members of the subcommittee. I am pleased to be here today at your invitation, and I will center my remarks on H.R. 4701.

First, however, I would like to say a few words about the problems we confront in handling bank failures.

We handled 120 bank failures and assisted transactions in 1985 and 40 so far this year, and we expect a similar volume; that is, 120 or more, in 1986, including some banks that are larger than those which failed last year.

We attempt to handle as many failures as possible through the purchase and assumption transactions, the P&A's. P&A's are less disruptive than payoffs to the affected communities. They grant equivalent treatment to small and large banks. They are less costly than payoffs to the insurance funds, but to have a P&A you must have a purchaser.

Let me now turn to the legislation before you, and I will start by highlighting the conditions in the bank industry that make statutory reform essential.

The troubled bank problems we face are serious. Oil and gas banks are threatened by a continuation of today's low oil prices, and moreover these problems are on the rise.

Now, we respect the deference to State authority over banking embodied in the Douglas amendment and the McFadden Act and seek no change by sleight of hand. While we always seek an intrastate solution; that is, within the State, many of the failing bank situations we see today may not be resolvable through intrastate P&A's.

In economically depressed States, strong willing buyers may not be available. Even healthy banks may find the troubled within-the-State institutions do not fit into their business plans.

Where few or no in-State buyers can be found, it becomes important to expand the number of potential bidders. This can be done by allowing out-of-State banks to make bids.

Multi-State auctions heighten competition and maximize a bank's sales price. This reduces the cost to the FDIC and thus to the other banks around the country, since it affects the amount of rebate we can give them on their premium.

The new combined institutions tend to be healthier and more likely to succeed than mergers that result from purely in-State auctions.

Interstate acquisition provisions already on the books have increased the FDIC's options in handling several bank failures, but these provisions have significant limitations. Existing law needs to be broadened and improved if we are to cope successfully with the failing bank situations that we may confront.

Briefly, our legislative proposal would do four things to expand the pool of buyers.

First, it would lower the size threshold of a bank eligible for acquisition from $500 to $250 million. This would add over 400 banks to the eligible list, 29 of which are on our problem list with assets over $10 billion.

Second, it would permit the acquisition of failing as well as failed commercial banks.

Third, it would allow bank holding companies to be acquired interstate when the failing bank exceeds the $250 million threshold and represents a sizable part of the holding company system.

Fourth, it would authorize acquiring banks to expand to the three largest metropolitan areas in the State of acquisition.

The proposal reflects our continued sensitivity to federalism concerns and the importance of the dual banking system.

Specifically, it would provide State bank supervisors notice and opportunity to object to proposed multi-State assistance transactions.

It would provide for rebidding procedures under certain circumstances giving in-State institutions the fullest opportunities to make an acquisition.

It would not interfere with State laws' determinations of whether a bank is in danger of closing.

Mr. Chairman, I believe that these provisions are a wise step to take in meeting possible strains in the banking system.

That concludes my prepared remarks, and I would be pleased to answer any questions.

Thank you.

[The prepared statement of Mr. Seidman may be found at the conclusion of this day's hearing in the appendix.]

Chairman ST GERMAIN. Does that last phrase—please forgive me, but I was talking to myself—was that last phrase in your written statement meaning "possible" strains in the banking?

Mr. SEIDMAN. It was in the oral statement.

Chairman ST GERMAIN. Yes, OK. Therefore, I just want to make sure that I am hearing you properly because when I was in high school we were told to be very specific with words, as well as in law school.

You know the difference between "possible" and "probable."

Now, are you still with the "possible" or would you want to change that to "probable"?

Mr. SEIDMAN. It is difficult to evaluate it. There are potential strains which are certainly within the realm of possibility to occur.

Chairman ST GERMAIN. Well, they are still within the realm of possibility rather than probability? So that sort of concurs with your Washington Post interview a few weeks ago?

Mr. SEIDMAN. I would say today that the realm of possibility is somewhat nearer than it was when I gave that statement.

Chairman ST GERMAIN. But it hasn't reached probability yet?

Mr. SEIDMAN. Well, that is a hard evaluation to make, sir.

Chairman ST GERMAIN. Well, you know, we are told that we can't see all these things, that they are State secrets. So that is why we have to ask you these questions, and that is not revealing anything, you know, telling tales out of school.

Mr. SEIDMAN. Well, I did give you some statistics, Mr. Chairman.

Chairman ST GERMAIN. You know, like FSLIC doesn't mess around—I mean the Home Loan Bank Board. They say it is not possible; it is probable; it is probably actual. [Laughter.]

Mr. SEIDMAN. Well, I am pleased that I don't have to meet that problem.

Chairman **St Germain**. I am sorry?

Mr. **Seidman**. I said I am pleased that I don't have to meet that problem.

Chairman **St Germain**. Well, you do have to sort of address it a little more accurately, don't you? You may not have to meet a problem, but do you want to stick with possible, approaching probable, but not probable, is that it?

Mr. **Seidman**. Yes, sir, I will stick with that.

Chairman **St Germain**. OK. We will now hear from the Honorable Robert Clarke, who is our Comptroller of the Currency.

STATEMENT OF HON. ROBERT L. CLARKE, COMPTROLLER OF THE CURRENCY

Mr. **Clarke**. Mr. Chairman and members of the subcommittee, thank you for this opportunity to present my views on H.R. 4701. The bill would amend the emergency acquisitions provisions of the 1982 Garn-St Germain Act to provide bank supervisors with greater flexibility in dealing with weakened banks.

It is no secret that a number of banks are experiencing financial difficulty. I recently testified before this subcommittee on the problems facing national banks that have exposures to weakened sectors of the economy.

It is an unfortunate fact that the current high rate of bank failures is expected to be with us for some time—at least under our present system of dealing with bank failures. It is therefore more important than ever before that we deal with each failure in a way that minimizes any disruption in the provision of banking services to the community, the potential for a decline in public confidence in the banking system, and its cost to the FDIC. The acquisition of a troubled bank by a stronger institution is often the solution that minimizes the adverse effects that can result from the failure of a bank.

It is important to recognize, however, and it is perhaps not a coincidence, that almost two-thirds of the problem national banks are in unit banking States or States that otherwise limit branching. Such restrictions limit the number of in-State options for the acquisition of failing banks and reduce the number of bidders for failed banks, making it more difficult for the FDIC to arrange purchase and assumption transactions. If a purchase and assumption cannot be arranged, the FDIC must choose between liquidating a failed bank and paying off its depositors or propping it up with FDIC-provided capital.

Our Office, the Federal Reserve Board, and the FDIC believe that expanding the number of potential acquirers of weak banks and removing some of the constraints on out-of-State purchasers of these banks will enhance our ability to resolve weakened bank situations in an expeditious, least-cost manner. I will now discuss briefly the primary features of our proposal and how they will enhance our ability to deal with weakened banks.

First of all, the bill would expand eligibility to failing banks. Authorization of out-of-State acquisitions of weakened institutions before they fail would expand the FDIC's options for dealing with those banks. A bank that is still operating is more likely to attract favorable bids than is a closed bank because the open bank's value as an ongoing business can be preserved, at least in part. Consequently, we expect that a smaller commitment of FDIC funds would be required to resolve the situation. Moreover, reducing the total number of bank failures would help maintain the stability and confidence in the banking system as a whole.

Second, the bill would lower the size threshold for eligible institutions. Making banks with fewer than $500 million in assets eligible for the emergency acquisition provisions of the Garn-St Germain Act would enhance the FDIC's ability to arrange for the purchase and assumption of midsized banks. There are a limited number of banks in any one State that are large enough to safely purchase another large or midsized bank that is in danger of failing. Because banks play an important role in the economic life of their communities, we believe that it is critical that the FDIC have maximum flexibility in resolving any problems they experience. In the absence of alternative solutions, such as out-of-State acquisitions, it is likely that the FDIC will be forced to perform more liquidations and deposit payoffs, with a resulting loss in banking services to local communities. The bill would reduce the minimum threshold to $250 million in assets, and I believe that these are sound reasons for reducing it even further.

Third, the bill would extend to bank holding companies. The bill extends the emergency acquisition——

Chairman St Germain. Mr. Clarke, on that point, the $250 million, you know, all of you regulators come up here and testify to the $250 million and that it should be lowered even further.

Well, why did you put $250 million in the bill that you sent us?

Mr. Clarke. Mr. Chairman, we were attempting to balance a variety of interests that we felt——

Chairman St Germain. Did you feel there were some powerful Members of Congress who might object to going below $250 million, particularly on the Senate side?

Mr. Clarke. No. The concern was that we come up with a bill——

Chairman St Germain. Or were there powerful lobbyists from the big State of Texas that you thought might be too awesome to take on?

Mr. Clarke. No, sir. The feeling was that there were a variety of people who were going to have an interest in this bill and that the $250 million level might be more acceptable to a wide range of those people. But I think those of us who have to deal with the problem from the supervisory side would prefer that the threshold be lower.

Chairman St Germain. OK, thank you.

Mr. Clarke. The bill extends the emergency acquisition provisions to holding companies that have a subsidiary bank or banks in danger of closing if such bank or banks have assets of at least $250 million and hold one-third or more of the total assets of the holding company's bank subsidiaries.

This will facilitate emergency acquisitions in States that prohibit branching but allow multibank holding companies. Currently, an out-of-State bank holding company that acquires a troubled institution is not permitted to acquire other banks in that State. Thus, potential acquirers are deterred by the prospect of being limited to a single office location and purchasing what is, quite likely, the most troubled part of the holding company. The proposed change would mitigate these problems by allowing other bank subsidiaries or the entire holding company to be acquired.

The fourth major provision of the bill is that it provides additional expansion opportunities for acquirers. The bill authorizes out-of-State bank holding companies that acquire a troubled institution to acquire, at any future, time additional banks located in prescribed areas. This amendment reduces but does not eliminate some of the competitive disadvantages that out-of-State acquirers face relative to in-State holding companies. Without at least some opportunity for expansion, out-of-State companies do not have much incentive to bid for a troubled bank in unit banking States.

In addition to making these four changes to the 1982 Garn-St Germain Act, the bill introduces another concept. It amends the Douglas amendment of the Bank Holding Company Act to provide for out-of-State acquisitions of failing banks in instances where no FDIC assistance is involved. This would encourage weakened institutions to find private solutions to their problems before those problems reach a stage that demands Federal financial assistance, further reducing potential demands on the FDIC's resources.

Recognizing the possible concerns of States regarding out-of-State acquisitions, the bill provides the State banking supervisors with a significant role in these transactions. First, the bill, in effect, requires that the target bank or bankholding company exhaust all in-State alternatives before seeking a potential out-of-State acquirer. Second, the State supervisor may effectively veto a proposed out-of-State acquisition by demonstrating that there exists a willing in-State purchaser with sufficient financial and managerial resources to acquire the bank or bank holding company. This will prevent shareholders of a weakened institution from realizing a windfall gain attributable solely to the institution's eligibility for acquisition by an out-of-State purchaser. This approach gives States the opportunity to find their own solutions when banks are in danger of failing. Where no in-State solution is available, it facilitates the use of out-of-State sources of capital.

Mr. Chairman, some have said that this bill is intended to make an end run around the Douglas amendment. I can state categorically that that is not the case. Nor is it an effort on our part to effect sweeping changes in the relative roles of Federal and State bank regulatory authorities.

This bill is intended solely as a means of facilitating the resolution of failures and near failures in the banking industry. We sincerely hope that we will never have to use the powers if they are granted. Indeed, the current emergency acquisition provisions of the Garn-St Germain Act have been invoked only infrequently, but when they have been used, they have save the FDIC significant dollars. It appears to me that we can better manage the problems posed by failing institutions if we have better tools to do that job. As a matter of fact, the mere availability of these tools may provide some stability to the banking system by reassuring depositors that there exists a means for achieving an orderly transition of the ownership of a troubled institution.

If these tools do have to be used, I believe that they would help mimimize the disruption to the community, any loss in public confidence, and the cost to the FDIC insurance fund involved in resolving a weakened bank's problems. I therefore urge the Congress to give H.R. 4701 immediate and favorable consideration.

Thank you very much.

[The prepared statement of Mr. Clarke may be found at the conclusion of this day's hearing in the appendix.]

Chairman **St Germain**. Thank you, Mr. Clarke.

Now we will hear from another very familiar face and voice and prophet, Mr. James Sexton, who is commissioner of the Texas State Banking Department, a very, very responsible and I would say not an easy task. I have been down in Texas for hearings a few times. They are wonderful people, but they are not easy to handle. [Laughter.]

We are pleased to have you back before us again, Mr. Sexton.

STATEMENT OF JAMES L. SEXTON, COMMISSIONER, TEXAS STATE BANKING DEPARTMENT

Mr. **Sexton**. Thank you, Mr. Chairman.

Mr. Chairman, members of the subcommittee, my name is Jim Sexton. I am the bank commissioner of Texas, and it is in that capacity that I have appeared here today.

Thank you for this opportunity to testify concerning H.R. 4701.

For as far back as I have knowledge of such things, the FDIC has been pushing to improve its technology for handling the banking industry's casualties. The fact that there has been relatively little notice given to the sharply increased incidence of bank failures in this country says a great deal about FDIC's success in that area.

The specter of difficulties in our larger banks has been with us always, and always the ability to do the job has manifested itself.

In the pre-deregulation days of 1973 and 1974, the lure of banking franchises provided a ready solution to the problems of Franklin National Bank and the U.S. National Bank, using the simple and straightforward purchase and assumption option provided by statute.

A section 13(c) open bank assistance program at the beginning of this decade brought a happy ending to the funding stress at First Pennsylvania Bank.

At Continental Illinois, a great deal of imagination was needed to structure a transaction that many consider ideal.

When the FDIC complained that in-State acquisitors may not always be available to acquire the assets and assume the liabilities of a larger failed bank, the Congress responded with the Garn-St Germain Act of 1982, permitting certain out-of-State acquisitions of failed banks.

Now, certain other constraints present themselves, such as the burgeoning volume of failed bank assets under management of the FDIC.

Another constraint is time. It is an axiom that FDIC either gets more time to handle its problems or it spends more money and buys more assets.

Yet another constraint is structure. There is no provision of deposit insurance law with which to deal with anything other than banks. What about an insolvent or otherwise failed or failing holding company?

And there is motivation for the regulators to seek to have their concerns addressed. Unexpected shocks in certain elements of our economy have created change, and banks do not tend to absorb rapid change very well. The winds of fortune that so briefly favored the producer of domestic energy now are at the back of the user and seriously threaten a permanent impairment of our domestic energy production capacity.

These problems, not surprisingly, ultimately are manifested in bad debt reserves in our banks. Nobody really knows the depth of this trough or that of agriculture or the ultimate banking consequences of both, but it is easy to understand FDIC's desire to be prepared.

All these obviously are valid concerns. The questions are, in my mind, does H.R. 4701 address those concerns fully, and does H.R. 4701 do unnecessary violence to the structural environment?

The inverse relationship between time and money was handled effectively in the Continental Illinois transaction, wherein subsequent developments properly determined the outcome with respect to the stockholders and the FDIC. Whether the proposed failing bank powers can match those results is certainly worth questioning.

Under the proposed bill, a bank would be defined, using necessarily imprecise and imperfect criteria, as being in danger of closing. There would ensue efforts to "shop" the bank inside the State and then perhaps outside the State. Each potential suitor presumably would have to perform its own analysis of the target bank, consuming an important amount of time, during which the inexorable erosion of the bank's ability to fund itself, which perhaps contributed to the failing determination in the first place, presumably would continue and likely would intensify.

The failing bank concept seems useful, properly defined and controlled. Reflecting the illusiveness of understanding as to just what a failing bank looks like, there have been quite a number of definitions discussed.

Whereas a failed bank typically is identified by subtracting liabilities from assets and finding a negative number, the failing bank determination could occur only after many decisions are made.

Can a capital impairment be corrected through any of the time-proven methods?

Is the bank eligible for capital assistance from the FDIC?

Does the availability of an interstate bonus, forbidden to nonfailing banks, become a prejudice against the choice of these alternatives?

Can we accurately project that the bank involved really will fail through erosion of capital or liquidity, given enough time, or like First Pennsylvania, could it, given a respite from the onslaught of pressures brought on by the current fact situation, as well as rumor and innuendo, survive and flourish?

In this enlightened period, it is certainly doubtful to me that any solvent bank should fail because of inability to fund itself. If the stockholders continue to have unimpaired funds at risk, the use of the various mechanisms we have devised to protect banking from 1930's style liquidity crises should be employed.

We have long known that any bank that is serving its community cannot simply cash in its chips to whatever extent the creditors may demand. We deal in confidence, and to me, that entails supporting solvent banks having liquidity needs, whether short term or long term.

The various regulators, myself included, recently promulgated policies of forbearance. In smaller banks, the regulators pose the only discipline because FDIC, with its massive and ample resources, insures all or practically all the bank's creditors.

This sedative is not effective in an institution that has a largely uninsured base of funding. While the FDIC may forbear, the creditors likely will not. Forbearance will not be effective for larger financial institutions until and unless there is some tangible evidence of support for the liquidity of those institutions.

H.R. 4701 would permit the sale of an entire holding company if a certain percentage of its assets are in the failing category. Here arises the issue of how much of this concept is for the valid purpose of tending to our responsibilities to the banking system, and therefore to the public, and how much is lubricant to make the transaction cheaper at the expense of Douglas amendment protections.

Undeniably, the protection offered holding company creditors would add some significant measure of comfort for creditors in that class throughout the system, and that perhaps is important.

There is a certain attraction, however, to selling only those subsidiaries considered failing, along perhaps with other subsidiaries with capital deficiencies that have arisen in a normal course, uncontrived fashion. It is certainly possible to leave sound subsidiaries under the ownership of a holding company whether it is solvent or insolvent.

Over the years, my department has endeavored to regulate holding company subsidiary banks as banks, not branches. They have their own capital, their own liquidity, and their own boards of directors. There is no reason a bank so equipped could not prosper without ill-defined support from a holding company.

In my estimation, there is an alternative to the full holding company proposal if both the rights of the various States and the financial costs are considered.

The competition between intrastate and interstate bidders is at best an uneven match. Unless a bidder within the State is willing to sacrifice itself for whatever purposes the Douglas amendment intended to accomplish, it rarely can feasibly match the bid of an organization seeking new markets for its particular line of goods.

Also, there is the interstate windfall to stockholders that has been mentioned frequently in context with this bill.

Both these interests would be served by availing domestic bidders of a modicum of bidding advantage on a bank deemed to be failing. Admittedly, this methodology frequently would involve a small degree of FDIC assistance on an intrastate transaction, whereas a free transaction occasionally would be available interstate.

Finally, I would respectfully offer a few specific ideas for the subcommittee's consideration.

One, at the threshold, "failing bank" must be tightly defined, so it accomplishes only its expressed intentions as it is used in future administrations and under different regulatory leaders.

My suggestion is that a bank qualify as "failing," when its primary regulatory capital consists only of its loan valuation reserve, as determined by the relevant regulators, according to generally accepted accounting principles.

Two, the Garn-St Germain threshold of $500 million in assets for failed banks does not work in some States, due to the relatively small size of the average larger institution. To be optimally effective and to provide a proper balancing of interests, each State would practically have to have its own prescribed size criterion.

I see no reason why the dollar threshold could not be eliminated for failed banks. With the essence of the Douglas amendment being met instead with a positive mandate that the FDIC attempt to meet its cost test with an intrastate bid as a prerequisite for going outside the State. This would serve the stated purpose. It would meet all contingencies, including any situation where a State may have no qualified bidders for a bank just below the present or proposed threshold.

I would again suggest a "head start" for intrastate bidders in any failing bank transaction having potentially interstate scope.

The cost to the FDIC would be the same type of cost that occurs in any failure of any size not meeting the current Garn-St Germain threshold.

Four, in all instances where an "intrastate" transaction is referred to in the statute, that term should include all States that can legally acquire failed or failing banks in the State of domicile of the failed or failing bank.

Five, I sincerely hope that this subcommittee soon will be addressing deposit insurance reform measures, including the FDIC's "bridge bank" concept that seems to have so much constructive application to the problem we are discussing here today.

Thank you, Mr. Chairman, members of the subcommittee. I will be glad to answer any questions.

[The prepared statement of Mr. Sexton may be found at the conclusion of this day's hearing in the appendix.]

Chairman St Germain. Thank you, Mr. Sexton.

Mr. Clarke, in your testimony, you made a reference that said that contrary to what is perceived by many as an end run around to accomplish interstate banking, it is not the intent of this legislation—or I think the regulators—that that be the case.

Listening to Mr. Sexton, he brought out the fact that intrastate bidding under this legislation wouldn't really be able to compete with the interstate bidding, because the premium and the new area for product lines, et cetera, for an interstate purchaser. So I would say to you that perhaps it wasn't the intent of the regulators in drafting H.R. 4701 that this be accomplished, but there is real concern on the part of many that maybe that wasn't the intent, but that could be the end result.

Mr. Clarke. May I comment on that just for 1 minute?

Chairman St Germain. Sure.

Mr. CLARKE. That is a fair concern, but the bill does give a clear preference to an in-State solution in an unassisted transaction. No matter how attractive an out-of-State bid may be or how aggressive out-of-State acquirers may be, if there is an in-State transaction that can be consummated, and the State banking superintendent in that State can certify that there is such a transaction available, the out-of-State acquisition will not be approved by the Fed.

Chairman ST GERMAIN. Well, now we have a State bank supervisor sitting down with you, and I am going to ask Mr. Sexton to address himself to that.

Mr. SEXTON. Well, Mr. Chairman, I think it is a fact, as I testified, that there is always an edge in the corner of the out-of-State bidder trying to enter new markets. And I think being able to peddle a bank inside the State without assistance, is perhaps not enough to offset the out-of-State problem.

I think to properly offset that there needs to really be a headstart on the part of the in-State organization, including some help from the FDIC to do that transaction with some amount of assistance inside the State and then, if you have a lid on the amount of assistance you'll provide, say, 2, 2½ percent of liabilities, and if you can't do it for that, then you go outside the State. That would make the playing field a bit more level. As a matter of fact, that would be a fair transaction.

Chairman ST GERMAIN. The supporters of community service and concentration provisions are seeking to have these provisions apply after the emergency is dealt with. They would require that any bank acquired by an out-of-State company be required to meet community service requirements after the acquisition.

Now they find it very difficult to understand why a bank whose bad assets have been taken over by the FDIC and then acquired by an out-of-State company, should not be bound by a community service requirement. In other words, FDIC funds are used to purchase the bad assets, and the purchaser comes in and now has that bank, why shouldn't they be required to meet the community service requirements? And then as to the concentration, I would like to say that supporters want only to have the provision apply to nonemergency acquisitions, so that that it is not as drastic as some had thought, and I commend those people for the fact that they are recognizing the fact that in emergency situations, things are a little different.

Now Mr. Seidman, I wrote you last week and asked you if it would be possible for a nonfinancial institution to avail itself of any of the provisions of H.R. 4701, in order to acquire an insured bank.

Your answer:

It is possible for a nonfinancial institution to acquire an insured bank under existing law. It would remain possible under 4701. This bill neither authorizes nor prohibits such a transaction.

The same question was posed to the Federal Reserve Board.

The reply from the Fed:

4701 does not alter in any way the provision of section 4 of the Bank Holding Company to prohibit a nonbanking company from acquiring a bank. Thus, a nonfinancial institution may not acquire an insured bank under the provisions of 4701.

4701 permits the interacquisition of a failed or failing bank only by a bank holding company.

Now could you resolve that seeming difference for us, Mr. Seidman.

Mr. **Seidman**. I think the answer is, Mr. Chairman, that this proposed law makes no change in present law. The interpretation of who could acquire what, I think we were referring to the fact that a holding company could acquire a bank. And that is all that was involved. The answers really are not inconsistent in that regard.

Chairman **St Germain**. Well, you don't think so, but I am still not clear, so I wish that you would have your very competent legal staff sit down with the very competent Fed legal staff and come up with a reply to that question propounded to both of you last week that would be signed by both of you.

Mr. **Seidman**. Yes, I believe we can do that.

Chairman **St Germain**. Thank you.

[In response to the request of Chairman St Germain, the following information was submitted for the record by Messrs. Seidman and Clarke:]

FERNAND J. ST GERMAIN, RHODE ISLAND, CHAIRMAN

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May 12, 1986

Honorable L. Wm. Seidman
Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20552

Dear Honorable Seidman:

Thank you for your testimony on May 8, 1986, on H.R. 4701, the "Financial Institutions Emergency Acquisitions Amendments of 1986". The Subcommittee would appreciate written answers to the following questions on issues of interest raised during those hearings.

1. In my letter to you of last week I asked if it would be possible for a nonfinancial institution to avail itself of any of the provisions of H.R. 4701 in order to acquire an insured bank. You answered:

> "It is possible for a nonfinancial institution to acquire an insured bank under existing law and it would remain possible under H.R. 4701. This bill neither authorizes nor prohibits such a transaction."

I posed the same question to the Federal Reserve, and Chairman Volcker answered:

> "H.R. 4701 does not alter in any way the provisions of Section 4 of the Bank Holding Company Act that prohibit a nonbanking company from acquiring a bank. Thus, a nonfinancial institution may not acquire an insured bank under the provisions of H.R. 4701. H.R. 4701 permits the interstate acquisition of a failed or failing bank only by a bank holding company."

Finally, Comptroller of the Currency, Robert Clarke answered the same question as follows:

> "H.R. 4701 does not address acquisitions by nonfinancial institutions. The purpose of this legislation is to remove those geographic restraints, such as the Douglas Amendment, that currently prevent out-of-state banks and bank holding companies from acquiring a depository institution that is in danger of closing."

Please explain the difference between your answer and that of the Federal Reserve and the Comptroller of the Currency.

2. Also in my letter to you of last week, I requested that the FDIC provide the Subcommittee the level of FDIC assistance under Section 13(c) of the Federal Deposit Insurance Act currently outstanding, with a breakdown of such assistance. You answered:

"In the interest of providing a timely response and in providing useful information we have excluded detail on assistance provided to faciliate within-state purchase and assumption transactions for banks that failed and were closed by their chartering authority. Such P&A transactions represent by far the most common form of assistance and will continue to be the most common form with or without new legislation. In 1982 there were 25 such transactions, 36 in 1983, 62 in 1984, 87 in 1985 and 29 through April 30, 1986. Information on these transactions can be provided at a later date if it is so desired."

Please provide the additional information.

2. In order to clarify certain issues regarding intrastate and interstate expansion rights under H.R. 4701 which were raised during the Subcommittee's hearing on Wednesday, May 7, 1986, please answer the following:

a. Would H.R. 4701 permit an in-state bank or its bank affiliates acquired by an out-of-state institution to expand by branching to the same extent permitted by state law for other in-state banks?

b. Would H.R. 4701 permit an out-of-state bank holding company that has acquired an in-state bank or bank holding company to expand only by purchasing another in-state bank located in one of the three largest metropolitan areas in that state? If so, how long would this limitation remain in effect?

c. Would H.R. 4701 permit an in-state bank holding company acquired by an out-of-state institution to expand by acquisition into another state if that other state's "compact" statute permitted "leapfrogging"?

3. During the Subcommittee's hearings on H.R. 4701, the issue of shareholder's rights in those insured banks "in danger of closing", and of the rights shareholders in the parent bank holding companies and affiliates was raised. The question arose as to whether under H.R. 4701, the shareholders of "failing" banks (and shareholders in their parent bank holding companies and affiliates) should benefit through "windfall" profits from such interstate transactions.

Please explain and comment upon the rights of these shareholders under transactions anticipated under H.R. 4701, and whether such shareholders should be allowed to profit from such transactions.

Again, I appreciate your testimony and request that answers to the above questions be provided by May 22, 1986 in order to complete the hearing record.

Sincerely,

Fernand J. St Germain
Chairman

FJStG:kTk

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington DC 20429

OFFICE OF THE CHAIRMAN

RECEIVED

JUN 4 1986

Subcommittee on Financial Institutions

June 2, 1986

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Banking, Finance & Urban Affairs Committee

Honorable Fernand J. St Germain
Chairman
Subcommittee on Financial Institutions
Supervision, Regulation, and Insurance
Committee on Banking, Finance and Urban Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter responds to questions posed during my May 8, 1986 testimony on H.R. 4701, as well as the follow-up questions contained in your May 12, 1986 letter.

Questions Posed During Testimony

During my testimony you presented four changes to H. R. 4701 recommended by the Honorable James Sexton, Banking Commissioner of the State of Texas, and requested my comments on each proposal.

First, Mr. Sexton proposed that a failing bank should be defined as one whose capital has declined to the point where it consists only of the loan valuation reserve.

Mr. Sexton's suggestion is too inflexible. A bank can fail because of exhausted capital or inability to meet current withdrawals, a liquidity crisis. Suggesting that a bank be considered "in danger of failing" only when its capital consists only of its loan loss reserve overlooks the possiblity of a liquidity crisis. Moreover, loan loss reserves are maintained to absorb existing yet unidentified losses. Our experience suggests that whenever a bank is down to only its loan loss reserves, it is already insolvent and well past the point of "failing."

The provisions of H.R. 4701 would give bank regulators the flexibility to assess objectively asset quality and the dangers of a liquidity crisis. This would allow supervision to resolve crises before they adversely impact the system.

BEST COPY AVAILABLE

Second, Mr. Sexton proposed the $250 million size limit should be eliminated for failed but not failing banks. We do not see any reason for making a size distinction between "failed" and "failing." The goal is the same in both cases -- to increase the availability of healthy merger partners, minimize the disruption to affected communities, and reduce the cost to the insurance fund and thus all other banks.

Third, Mr. Sexton also proposed that consideration should be given to providing the FDIC with an expanded "bridge bank" or conservatorship authority. FDIC is a proponent of such authority and urges its consideration and eventual enactment. Such a power should help reduce FDIC costs and disruption from bank failures. At the same time, however, interest in expanded interstate legislation is more immediate and enactment of the proposed amendments to H.R. 4701 should not be delayed to permit the consideration of bridge banks.

Fourth, Mr. Sexton's final proposal was that emergency acquisitions within a regional compact should be treated as intrastate in nature, and H.R. 4701 should be amended to clarify this. Under H.R. 4701, while adjacent states are given preferential consideration over other states, regional compacts are given no special consideration. We would not object, however, to amending H.R. 4701 to permit equal consideration for in-state banks and banks from member compact states.

Written Questions Posed in the May 12 Letter

In your May 12 letter you raised four additional points.

First, you asked whether there was a difference among the FDIC's, the Federal Reserve's, and the Comptroller of the Currency's responses to an earlier question you posed. That question asked whether it would be possible for a nonfinancial institution to avail itself of any of the provisions of H.R. 4701 in order to acquire an insured bank.

We do not believe there is any substantive difference in the responses of the three agencies. H.R. 4701 does not address and does not alter existing law as it pertains to nonfinancial institutions. Specifically, it does not authorize a nonfinancial institution to acquire a bank. Instead, H.R. 4701 addresses the expressed statutory prohibitions to financial institutions' interstate expansion by permitting such expansion under specified circumstances.

Furthermore, the responses by the FDIC and the Federal Reserve Board regarding a nonfinancial institution's ability to acquire a bank are not inconsistent. In explaining that "it is possible for a nonfinancial institution to acquire an insured bank," the FDIC was referring to the acquisition of insured "nonbank banks" that either accept demand deposits and make commercial loans, but not both. Nonbank banks are not banks within the meaning of the Bank Holding Company Act. Hence, the Federal Reserve Board's statement that "the Bank Holding Company Act ... prohibit[s] a nonbanking company from acquiring a bank" is perfectly accurate, and not at odds with the FDIC's response.

Second, you requested that we provide additional information regarding assistance provided to banks since 1982.

Outstanding principal balances on December 31, 1985, for each P&A transaction in 1982 through 1985, are listed on the attached schedule. Except where noted otherwise in the schedule, assistance was provided by purchasing assets and was done to facilitate a merger that will cost the FDIC less than a deposit payoff. The outstanding principal for any given P&A is the difference between FDIC's expenditures and collections applied against principal. In addition to purchasing assets from the failed bank, expenditures include such things as liquidation expenses for direct payroll costs, allocated overhead, legal and other professional services and advances to protect assets, and, in some cases, certain liabilities of the failed bank assumed by the FDIC. Also, beginning in 1983, the FDIC started collecting interest on principal before applying collections to reduce principal.

A few items in the attached schedule show principal balances greater than the original amount of assistance. This reflects situations where collections were insufficient to cover liquidation expenses and accrued interest.

Third, you requested clarification whether:

(a) H.R. 4701 would permit an in-state bank or its affiliates acquired by an out-of-state institution to expand by branching to the same extent permitted by state law for other in-state banks?;

(b) H.R. 4701 would permit an out-of-state bank holding company that has acquired an in-state bank or bank holding company to expand only by purchasing another in-state bank located in one of the three largest metropolitan areas in that state? If so, how long would this limitation remain in effect?; and

(c) H.R. 4701 would permit an in-state bank holding company acquired by an out-of-state institution to expand by acquisition into another state if that other state's "compact" statute permitted "leapfrogging"?

The current language of Title I of the Garn-St Germain Act permits a bank acquired under its provisions to retain all of its existing branches and to branch within the state to the same extent a national bank in that state may branch. Our proposed amendments to Title I retain this branching provision. Because some states do not authorize branching but do authorize multibank holding company expansion within the state, our proposed amendments also authorize an out-of-state bank holding company that acquires a bank or bank holding company under its provisions to expand by acquiring additional banks located in the three largest metropolitan areas in the state. As H.R. 4701 is currently drafted, this authority would end whenever the extraordinary acquisition powers expire. H.R. 4701 would extend these powers until 1991. Once the authority expires, authorization for additional acquisitions also expires -- unless the state enacts legislation authorizing additional acquisitions. We believe the bill should be amended to eliminate application of the sunset to the acquisition powers and such powers should continue after the expiration of the interstate authority.

H.R. 4701 does not address "leapfrogging" and it would not authorize a bank acquired under its provisions to expand to other states within a compact. If, however, a specific state within a compact did not prohibit such expansion, an out-of-state institution that enters another state in the compact through the extraordinary acquisition powers could expand into the first state. Most regional compacts, however, have arrangements preventing such leapfrogging.

Fourth, you asked whether shareholders of "failing" banks (and shareholders in their parent bank holding companies and affiliates) should benefit through "windfall" profits from interstate transactions.

We believe the consideration received by a failing bank under H.R. 4701 would be substantially less than the shareholders' original capital contributions. Nevertheless, the transaction could result in a windfall or premium to shareholders because of the interstate franchise that would be created.

However, failing bank transactions will normally require FDIC financial assistance. As to those instances, the "FDIC Statement of Policy and Criteria on Assistance to Operating Insured Banks Which Are in Danger of Failing" provides in part: "(1) Former shareholders should not receive financial remuneration for their stock, either in the form of continuing value for existing shares or payments in cash or new securities, except where the proposal assures the FDIC of full payment, at present value, of all assistance granted before any benefit is realized by former shareholders. (2) Holders of subordinated debt should not receive principal or interest payments or other monetary benefit until such time as any FDIC assistance has been repaid in full at present value. (3) All bank directors, officers serving in a policymaking role, and other officers as may be designated by the FDIC should submit their written resignations unless their continued association with the bank has been previously approved the FDIC. Such persons may not later reassociate themselves with the bank without the prior consent of FDIC."

Conclusion

I trust that these responses prove satisfactory. The FDIC remains willing and ready to provide any additional information you may require.

Sincerely,

LWm Seidman

L. William Seidman
Chairman

Attachment

1982 (000 Omitted)

Name of Institution	Current Balance	Amount of Assistance	Acquiring Institution
The First National Bank and Trust Company of Tuscola Tuscola, Illinois	3,719	7,210	First National Bank of Douglas County Tuscola, Illinois
Metropolitan Bank and Trust Company Tampa, Florida	32,213	75,980	Great American Bank of Tampa Tampa, Florida
Bank of Yorkville Yorkville, Tennessee	2,865	5,188	First Citizens National Bank of Dyersburg Dyersburg, Tennessee
The First National Bank in Humboldt Humboldt, Iowa	9,532	10,617	Hawkeye Bank and Trust Company Humboldt, Iowa
Aquia Bank and Trust Company Stafford, Virginia	5,014	9,770	Peoples Bank of Danville Danville, Virginia
National Security Bank Tyler, Texas	788	4,660	Bank of Tyler, N.A. Tyler, Texas
Pacific Coast Bank San Diego, California	5,714	7,030	Commonwealth Bank Hawthorne, California
Coles County National Bank of Charleston Charleston, Illinois	3,138	11,596	Eagle Bank of Charleston Charleston, Illinois
Community Bank of Washtenaw Ypsilantik, Michigan	3,731	11,123	Michigan National Bank Ann Arbor Ann Arbor, Michigan
Banco Regional Bayamon, Puerto Rico	3,227	17,382	Citibank N.A. New York, New York
Farmers State Bank of Lewistown Lewistown, Illinois	10,634	21,246	Farmers State Bank of Fulton County Lewistown, Illinois
The Belle-Bland Bank Bland, Missouri	854	1,754	Eagle Bank of Gasconade County Bland, Missouri
The Bowie County State Bank Hooks, Texas	2,150	11,498	First Bank and Trust Company Hooks, Texas
Guaranty Bond State Bank Redwater, Texas	3,515	11,640	First Bank and Trust Company Redwater, Texas
Unity Bank and Trust Boston, Massachusetts	4,466	6,700	The Boston Bank of Commerce Boston, Massachusetts
Mount Pleasant Bank and Trust Company Mount Pleasant, Iowa	702	14,285	Hawkeye Bank and Trust Company Mount Pleasant, Iowa
First Security Bank of North Arkansas Horseshoe Bend, Arkansas	3,276	10,167	The Bank of Melbourne Melbourne, Arkansas
Security Bank and Trust Company Cairo, Illinois	2,753	7,410	First Bank and Trust Company Cairo, Illinois
Western National Bank Santa Ana, California	6,336	16,232	Commonwealth Bank Hawthorne, California
Cedar Bluff Bank Cedar Bluff, Alabama	2,398	7,463	Union State Bank Cedar Bluff, Alabama
The First National Bank of South Charleston South Charleston, West Virginia	5,520	12,500	Charleston National Bank Charleston, West Virginia
Texas Bank of Amarillo Amarillo, Texas	904	5,765	First Bank of Amarillo Amarillo, Texas

1982 (2)

(000 Omitted)

Name of Institution	Current Balance	Amount of Assistance	Acquiring Institution
Bank of Quitman Quitman, Arkansas	1,531	5,999	First National Bank of Cleburne County Quitman, Arkansas
Bollinger County Bank Lutesville, Missouri	2,132	8,955	Security Bank of Bollinger County Lutesville, Missouri
The Security State Bank Mooreland, Oklahoma	2,088	6,279	First State Bank of Mooreland Mooreland, Oklahoma

1983 (000 Omitted)

Name of Institution	Current Balance	Amount of Assistance	Acquiring Institution
The Madison County Bank Fredericktown, Missouri	881	3,064	Madison Exchange Bank Fredericktown, Missouri
American State Bank Bradley, Illinois	1,382	5,657	Midwest Trust and Savings Bank of Bradley Bradley, Illinois
United American Bank in Knoxville Knoxville, Tennessee	432,567	222,447	First Tennessee Bank Knoxville, Tennessee
Merchants and Farmers State Bank Blythe, California	1,562	2,941	Credit Bank Blythe, California
American City Bank Los Angeles, California	70,713	191,378	Central Bank Oakland, California
Newport Harbour National Bank Newport Beach, California	17,158	32,964	Trans American National Bank Monterey Park, California
Pan American National Bank Union City, New Jersey	6,294	17,905	Hudson United Bank Union City, New Jersey
Bear Creek Valley Bank Phoenix, Oregon	6,662	8,871	Valley of the Rogue Bank Rogue River, Oregon
The Ina State Bank Ina, Illinois	3,156	9,362	First Bank and Trust Company Mount Vernon, Illinois
Bank of San Marino San Marino, California	4,908	7,805	Trans American National Bank Monterey Park, California
Heritage Bank Ashland, Oregon	5,701	10,495	Valley of the Rouge Bank Rogue River, Oregon
First National Bank of Oak Lawn Oak Lawn, Illinois	[illegible]	84,185	Oak Lawn National Bank Oak Lawn Illinois
Smith County Bank Carthage, Tennessee	9,714	18,039	Murfreesboro Bank and Trust Company Murfreesboro, Tennessee
City and County Bank of Knox County Knoxville, Tennessee	141,470	151,601	Bank of Knoxville Knoxville, Tennessee
United Southern Bank of Nashville Nashville, Tennessee	72,735	117,457	Union Planters Corporation Memphis, Tennessee
United American Bank in Hamilton County Chattanooga, Tennessee	34,282	65,716	Union Planters Corporation Memphis, Tennessee
City and County Bank of Roane County Kingston, Tennessee	17,683	22,146	Bank of Oak Ridge Oak Ridge, Tennessee
City and County Bank of Anderson County Lake City, Tennessee	72,357	81,969	Third National Corporation Nashville, Tennessee
The Commercial Bank of California Los Angeles, California	10,877	16,653	First Credit Bank Blythe, California
Community Bank Hartford, South Dakota	5,772	23,814	Western Bank Sioux Falls, South Dakota
The First Central Bank Smithville, Tennessee	7,577	11,353	City Bank and Trust Company McMinnville, Tennessee
Bank of Niobrara Niobrara, Nebraska	3,595	5,078	Farmers and Merchants State Bank Bloomfield, Nebraska

1983 (2) (000 Omitted)

Name of Institution	Current Balance	Amount of Assistance	Acquiring Institution
First Peoples Bank of Washington County Johnson City, Tennessee	95.582	86.515	First American National Bank Eastern Kingsport, Tennessee
Metro Bank Midland, Texas	14,636	20,794	Mid Cities National Bank Midland, Texas
The First National Bank of Danvers Danvers, Illinois	4,168	7,623	First State Bank of Danvers Danvers, Illinois
First Commerce Bank of Hawkins County Rogersville, Tennessee	23.551	20.805	Hamilton Bank of Johnson City Johnson City, Tennessee
United Southern Bank of Clarksville Clarksville, Tennessee	5.728	6.550	First American Bank of Nashville, NA Nashville, Tennessee
The Douglass State Bank Kansas City, Kansas	12,289	20,184	The Douglass Bank Kansas City, Kansas
Warren County Bank McMinnville, Tennessee	10,374	10,517	Murfreesboro Bank and Trust Company Mufreesborn, Tennessee
Dominion Bank of Denver Denver, Colorado	5,638	7,233	Central Bank of Stapleton, N.A Denver, Colorado
National Bank of Odessa Odessa, Texas	27.973	53,614	First State Bank of Odessa, NA Odessa, Texas
The Deschutes Bank Redmond, Oregon	5.997	7,318	United States National Bank of Oregon Portland, Oregon
The First National Bank of Midland Midland, Texas	697,470	1,076,217 (1)	Republic Bank Corporation Dallas, Texas
Union Trust Company San Juan, Puerto Rico	11.091	15,410	Banco Popular de Puerto Rico San Juan, Puerto Rico
Bank of Hackleburg Hackleburg, Alabama	2.150	2,797	Southrust Bank of Marion County Hamilton, Alabama
The Bank of Red Oak Red Oak, Oklahoma	3.923	6.006	Farmers State Bank Quinton, Oklahoma

(1) Includes assumption of liabilities

1984 (000 Omitted)

Name of Institution	Current Balance	Amount of Assistance	Acquiring Institution
Farmers Bank & Trust Company Winchester, Tennessee	11,101	26,441	Mid South Bank & Trust Company Murfreesboro, Tennessee
City and County Bank of Jefferson County White Pine, Tennessee	6,919	11,729	Merchants and Planters Bank of Newport Newport, Tennessee
Emerald Empire Banking Company Springfield, Oregon	9,717	17,570	Citizens Valley Bank Albany, Oregon
The Tucker County Bank Parsons, West Virginia	3,734	8,595	Citizens National Bank of Elkins Elkins, West Virginia
Heritage Bank of Bureau County Depue, Illinois	2,576	3,877	The Colonial Trust & Savings Bank of Bureau County Depue, Illinois
West Olympia Bank Los Angeles, California	7,950	12,100	Wilshire State Bank Los Angeles, California
Brownfield State Bank and Trust Company Brownfield, Texas	10,912	17,221	Brownfield State Bank Brownfield, Texas
United Bank of Oregon Milwaukie, Oregon	8,893	12,342	United States National Bank of Oregon Portland, Oregon
All American National Bank of Virginia Gardens Miami, Florida	4,163	7,265	Capital Bank North Bay Village, Florida
National Bank & Trust Company of Traverse City Traverse City, Michigan	25,400	56,776	NBD Northwest Bank, N.A. Traverse City, Michigan
First Security Bank Erwin, Tennessee	9,343	13,767	Bank of Tennessee Kingport, Tennessee
Watauga Valley Bank Elizabethton, Tennessee	6,236	9,585	Carter County Bank Elizabethton, Tennessee
The Shelby National Bank of Shelbyville Shelbyville, Indiana	10,812	26,895	American Fletcher National Bank and Trust Company Indianapolis, Indiana
Citizens Bank of Monroe County Tellico Plains, Tennessee	7,937	11,130	Bank of Oak Ridge Oak Ridge, Tennessee
Western National Bank of Casper Casper, Wyoming	11,451	13,293	Wyoming National Bank of West Casper Casper, Wyoming
State Bank of Hills Hills, Wyoming	2,964	3,485	Mountain Plaza National Bank Casper, Wyoming
The First National Bank of Rushford Rushford, Minnesota	9,773	15,238	Goodhue County National Bank Red Wing, Minnesota
The Mississippi Bank Jackson, Mississippi	46,553	103,937	Grenada Bank Grenada, Mississippi

1984 (2) (000 Omitted)

Name of Institution	Current Balance	Amount of Assistance	Acquiring Institution
Bledsoe County Bank Pikeville, Tennessee	2,122	2,524	Citizens Bank of Dunlap Dunlap, Tennessee
Planters Trust & Savings Bank of Opelousas Opelousas, Louisiana	32,499	36,992	First National Bank of St. Landry Parish Opelousas, Louisiana
Bank of Irvine Irvine, California	9,082	13,409	Security Pacific State Bank Irvine, California
Washington National Bank of Chicago Chicago, Illinois	3,605	7,901	Banco Popular de Puerto Rico San Juan, Puerto Rico
First National Bank of Prior Lake Prior Lake, Minnesota	8,226	9,391	First National Bank of Shakopee Shakopee, Minnesota
Garden Grove Community Bank Garden Grove, California	15,829	30,044	Capital Bank Downey, California
Cherokee County Bank Centre, Alabama	9,423	19,137	First Alabama Bank, N.A. Anniston, Alabama
Farmers State Bank Lyons, South Dakota	939	1,504	Dakota State Bank Coleman, South Dakota
The Lawrence County Bank Lawrenceburg, Tennessee	7,392	9,417	Farmers Bank of Lawrence County Lawrenceburg, Tennessee
The Corning Bank Corning, Arkansas	15,446	27,064	The Corning Bank Corning, Arkansas
The Farmers National Bank of Aurelia Aurelia, Iowa	2,941	8,126	Heritage Bank, N.A. Aurelia, Iowa
East Texas Bank & Trust Company Longview, Texas	20,635	58,105	Texas National Bank Longview, Texas
The Coffeen National Bank Coffeen, Illinois	1,829	2,590	Coffeen State Bank Coffeen, Illinois
The Guaranty Bank of Saint Paul St. Paul, Minnesota	11,757	16,071	Shelard National Bank St. Louis Park, Minnesota
Coalmont Savings Bank Coalmont, Tennessee	9,079	13,178	First Bank of Marion County South Pittsburg, Tennessee
Jackson County National Bank Tuckerman, Arkansas	6,833	8,489	First State Bank of Newport Newport, Arkansas
Peoples State Bank of Clay County Poland, Indiana	6,459	8,970	First State Bank Poland, Indiana
The Tingley State Savings Bank Mount Ayr, Iowa	7,223	13,169	Hawkeye Bank and Trust Mount Ayr, Iowa
American National Bank in McLean McLean, Texas	4,044	8,708	McLean Bank of Commerce McLean, Texas
Girod Trust Company San Juan, Puerto Rico	182,905	177,692	Citibank, N.A. New York, New York
The First State Bank Thayer, Kansas	4,132	6,820	First State Bank Thayer, Kansas

1984 (3) (000 Omitted)

Name of Institution	Current Balance	Amount of Assistance	Acquiring Institution
Bank of the Northwest Eugene, Oregon	8,078	14,054	First Interstate Bank of Oregon, N.A. Portland, Oregon
David City Bank David City, Nebraska	4,055	10,712	The First National Bank of Omaha Omaha, Nebraska
Oakland Savings Bank Oakland, Iowa	9,513	15,075	Oakland State Bank Oakland, Iowa
Community Bank & Trust Company Enid, Oklahoma	12,906	19,224	The First National Bank and Trust Company of Enid Enid, Oklahoma
Bank of Verdigre & Trust Company Verdigre, Nebraska	5,323	8,955	The National Bank of Neligh Neligh, Nebraska
Century National Bank Jacksonville, Florida	2,373	2,735	Barnett Bank of Jacksonville, N.A. Jacksonville, Florida
Security State Bank Weatherford, Oklahoma	25,271	34,972	United Community Bank Weatherford, Oklahoma
The Farmers & Merchants Bank Tecumseh, Oklahoma	10,484	15,992	Republic Bank of Tecumseh Tecumseh, Oklahoma
The Rexford State Bank Rexford, Kansas	3,832	3,745	Peoples State Bank of Rexford Rexford, Kansas
Oneida Bank & Trust Company Oneida, Tennessee	2,571	4,364	The Energy Bank Oak Ridge, Tennessee
Bucklin State Bank of Bucklin Bucklin, Missouri	8,627	9,712	United Missouri Bank of Brookfield Brookfield, Missouri
American State Bank Thomas, Oklahoma	8,561	11,763	The Bank of Thomas Thomas, Oklahoma
The Bank of Cody Cody, Nebraska	3,718	10,354	The Guardian State Bank Alliance, Nebraska
Farmers State Bank Kilgore, Nebraska	2,720	4,788	The First National Bank of Valentine Valentine, Nebraska
State Bank of Boyd Boyd, Minnesota	3,256	4,297	State Bank of Madison Madison, Minnesota
The First National Bank of Gaylord Gaylord, Kansas	3,127	4,138	Farmers National Bank of Gaylord Gaylord, Kansas
First American Banking Company Pendleton, Oregon	5,709	7,018	Inland Empire Bank Hermiston, Oregon
The Strong City State Bank Strong City, Kansas	2,104	2,798	Chase County Bank Strong City, Kansas
Golden Spike State Bank Tremonton, Utah	4,460	3,464	Golden Spike State Bank Tremonton, Utah
Farmers State Bank of Holyoke Holyoke, Colorado	1,617	2,060	Security National Bank Holyoke, Colorado

1984 (4) (000 Omitted)

Name of Institution	Current Balance	Amount of Assistance	Acquiring Institution
University Bank of Wichita Wichita, Kansas	2,608	1,820	Charter Bank, N.A. Wichita, Kansas
The Farmers State Bank Selden, Kansas	9,560	10,992	Selden State Bank Selden, Kansas
First Security Bank Sandwich, Illinois	2,592	2,592	First National Bank of Sandwich Sandwich, Illinois

1985 (000 Omitted)

Name of Institution	Current Balance	Amount of Assistance	Acquiring Institution
Coast Community Bank Harbor, Oregon	2,866	5,455	Security Bank of Coos County Coos Bay, Oregon
The First National Bank in Marlow Marlow, Oklahoma	9,986	13,165	The First National In Marlow (de novo), Marlow, Oklahoma Subsidiary of Valley Bancshares, Inc., Pauls Valley, Oklahoma
First National Bank in Clarksville Clarksville, Texas	13,757	13,235	Citizens Bank Clarksville, Texas (de novo) Subsidiary of Citizens Bancshares, Inc., Clarksville, Texas
The Steele State Bank Cherokee, Iowa	7,471	9.542	Valley Bank & Trust Cherokee, Iowa (de novo) Subsidiary of D&H Investments, Inc. Cherokee, Iowa
Citizens Fidelity Bank Bristol, Tennessee	8,023	9.054	Energy Bank Oak Ridge, Tennessee Subsidiary of Tennessee Eastern Bancshares, Inc., Oak Ridge, TN.
First National Bank of Woodbine Woodbine, Iowa	10,936	16,943	Iowa Savings Bank Woodbine, Iowa (de novo) Subsidiary of ISB Bancorporation, Inc., Woodbine, Iowa
Farmers National Bank of Erick Erick, Oklahoma	4,539	4,289	First American Bank of Erick Erick, Oklahoma Subsidiary of Erick Bancorp. Erick, Oklahoma
West Valley Bank Woodland Hills, California	16,633	31,990	The First Interstate Bank, Ltd. Woodland Hills, CA (de novo) Subsidiary of First Interstate Bancorporation, Los Angeles, CA
First National Bank of Eads Eads, Colorado	7,387	9,824	The Omnibank, Kiowa County, N.A. Eads, Colorado (de novo) Subsidiary of Omni Bancorp. Denver, Colorado
Inwood State Bank Inwood, Iowa	2,056	3,540	Security State Bank Larchwood, Iowa Subsidiary of Larch Bancorporation Larchwood, Iowa
Halifax National Bank of Port Orange Port Orange, Florida	6,356	17,225	Barnett Bank of Volusia County Deland, Florida Subsidiary of: Barnett Banks of Florida, Inc. Jacksonville, Florida
Citizens State Bank Arapahoe, Nebraska	3,425	7,382	Farmers & Merchant Bank Edison, Nebraska
Commercial State Bank Afton, Iowa	5,939	9,563	Citizens Savings Bank Afton, Iowa (de novo) Subsidiary of CSB Bancorporation, Inc., Afton, Iowa

1985 (2) (000 Omitted)

Name of Institution	Current Balance	Amount of Assistance	Acquiring Institution
Taylor State Bank Emington, Illinois	1,789	2,467	The First National Bank of Dwight Dwight, Illinois Subsidiary of First Dwight Corporation, Dwight, Illinois
Golden Valley Bank Turlock, California	31,496	38,716	Farmers & Merchants Bank of Central California Lodi, California
Fidelity Bank of Denver Denver, Colorado	17,699	32,493	American Bank of Commerce Denver, Colorado NBC Bankshares, Ltd. Denver, Colorado
The Bank of Hunter Hunter, Oklahoma	1,341	1,604	The First National Bank in Tonkawa Tonkawa, Oklahoma Subsidiary of First Bancorp of Tonkawa, Tonkawa, Oklahoma
Capistrano National Bank San Juan Capistrano, California	22,451	36,698	Farmers & Merchants Bank of Long Beach Long Beach, California
First State Bank of Elgin Elgin, Oregon	9,676	10,707	United States National Bank of Oregon Portland, Oregon
South Coast Bank Costa Mesa, California	10,270	18,591	Harbor Bank Long Beach, California
Peoples National Bank of Lampasas Lampasas, Texas	7,990	14,916	United Peoples Bank Lampasas, Texas
The First National Bank of Springfield Springfield, Colorado	6,982	8,924	Baca State Bank Springfield, Colorado
Peoples State Bank Odebolt, Iowa	4,330	6,988	Peoples Savings Bank Odebolt, Iowa (de novo)
The Bank of Commerce Chanute, Kansas	19,772	29,151	Bank of Commerce Chanute, Kansas (de novo) Subsidiary of Neosho County Bancshares, Chanute, Kansas
Farmers Savings Bank Massena, Iowa	10,854	12,919	Union National Bank Massena, Iowa (de novo) Subsidiary of Cornbelt Bancorporation, Correctionville, Iowa
Farmers State Bank of St. Joseph St. Joseph, Missouri	10,387	26,327	Farmers State Bank of Buchanan County St. Joseph, Missouri (de novo)
Story County State Bank Story City, Iowa	12,366	17,112	Story County State Bank & Trust Company, Story City, Iowa (de novo). Subsidiary of SSB Bancshares, Inc., Marshalltown, IA
Bank of Newcastle Newcastle, Oklahoma	14,185	19,280	Allied Oklahoma Bank, N.A. Oklahoma City, Oklahoma
The Energy Bank, N.A. Dallas, Texas	11,799	17,456	The Oak Bank & Trust Company Dallas, Texas (de novo) Subsidiary of Prestonwood Bancshares, Inc. Dallas, Texas

1985 (3) (000 Omitted)

Name of Institution	Current Balance	Amount of Assistance	Acquiring Institution
Northwest Bank White Settlement, Texas	18.094	27,815	Landmark Bank Northwest White Settlement, Texas (de novo) Subsidiary of Tarrant County Bancshares, Inc. White Settlement, Texas
Bank of Taylor Taylor, Nebraska	5.156	9.553	Union Bank & Trust Company Lincoln, Nebraska Subsidiary of Farmers & Merchants Investments Co. Milford, Nebraska
Security State Bank Edgar, Nebraska	2.595	3,903	The Guide Rock State Bank Guide Rock, Nebraska
Bank of Lockesburg Lockesburg, Arkansas	8.851	14,964	Bank of Lockesburg Lockesburg, Arkansas (de novo) Subsidiary of Dewitt First Bankshares Corporation Dewitt, Arkansas
American National Bank of Riverton Riverton, Wyoming	16.279	12,606	First Wyoming Bank, N.A. Riverton Riverton, Wyoming (de novo) Subsidiary of First Wyoming Bancorporation Cheyenne, Wyoming
The First State Bank Edna, Kansas	3,158	4,077	First State Bank of Edna Edna, Kansas (de novo)
Swift County Bank Benson, Minnesota	15,055	22,886	First Security State Bank Sleepy Eye, Minnesota Subsidiary of First Sleepy Eye Bancorporation, Inc. Sleepy Eye, Minnesota
Urbana Savings Bank Urbana, Iowa	1,085	2,213	Peoples Bank & Trust Company Cedar Rapids, Iowa Subsidiary of PB Bancorp of Cedar Rapids, Inc. Cedar Rapids, Iowa
First City Bank, N.A. Oklahoma City, Oklahoma	43,893	59,476	City Bank and Trust Oklahoma City, Oklahoma (de novo) Subsidiary of City Bankshares, Inc. Bartlesville, Oklahoma
First Bank and Trust Tracy City, Tennessee	6,071	10,255	First National Bank of Shelbyville Shelbyville, Tennessee Subsidiary of First National Bancorp of Shelbyville, Inc. Shelbyville, Tennessee
Madison Bank Madison, Kansas	2,838	2,004	The First National Bank of Madison Madison, Kansas Subsidiary of First National Bancshares of Madison, Inc. Madison, Kansas
The First National Bank of Jacksonville Jacksonville, Alabama	13,289	13,006	AmSouth Bank of Jacksonville Jacksonville, Alabama Subsidiary of AmSouth Bancorp. Birmingham, Alabama

1985 (4)

(000 Omitted)

Name of Institution	Current Balance	Amount of Assistance	Acquiring Institution
Eskridge State Bank Eskridge, Kansas	6,642	5,351	Flint Hills Bank of Eskridge Eskridge, Kansas (de novo) Subsidiary of Colt Investment, Inc. Prairie Village, Kansas
Linn County Bank Linneus, Missouri	2,905	2,344	United Missouri Bank of Linn County Linneus, Missouri (de novo) Subsidiary of United Bankshares, Inc., Kansas City, Missouri
Gilpin County Bank Blackhawk, Colorado	946	1,062	First Interstate Bank of Golden, N.A., Golden, Colorado Subsidiary of First Golden Ban corporation, Golden, CO
The First National Bank of Onaga Onaga, Kansas	4,981	3,006	First National Bank of Onaga Onaga, Kansas (de novo) Subsidiary of Onaga Bancshares, Inc., Onaga, Kansas
First National Bank of Glenrock Glenrock, Wyoming	7,310	9,009	National Bank of Glenrock Glenrock, Wyoming (de novo) Subsidiary of Glenrock Bancorp, Inc., Glenrock, Wyoming
Kansas American Bank Overland Park, Kansas	10,220	6,778	Mid American Bank & Trust Company of Overland Park (de novo) Overland Park, Kansas Subsidiary of Mid American Corp. Roeland Park, Kansas
Citizens State Bank of El Dorado El Dorado, Kansas	3,598	2,534	National Bank of El Dorado El Dorado, Kansas (de novo) Subsidiary of First Bancorp of Kansas, Wichita, Kansas
Riverside National Bank Houston, Texas	7,517	5,795	Peoples Bank, N.A. Houston, Texas (de novo) Subsidiary of Bay Bancshares, Inc. La Porte, Texas
Farmers State Bank Rising City, Nebraska	4,696	5,784	Union Bank & Trust Company Lincoln, Nebraska Subsidiary of Farmers & Merchants Investment Milford, Nebraska
Farmers State Bank of Round Lake Round Lake, Minnesota	9,403	5,268	Farmers State Bank of Mountain Lake Mountain Lake, Minnesota Subsidiary of Farmers Lake Corp. Mountain Lake, Minnesota
Mineola State Bank Mineola, Iowa	785	706	Glenwood State BAnk Glenwood, Iowa Subsidiary of Glenwood Bancorporation, Inc. Glenwood, Iowa
Security Bank and Trust Company Midwest City, Oklahoma	7,113	8,007	Security Bank of Midwest City Midwest City, Oklahoma Subsidiary of ComBan Shares, Inc. Oklahoma City, Oklahoma
State Bank of Farmersville Farmersville, Illinois	4,186	4,759	The Litchfield Bank and Trust Litchfield, Illinois Subsidiary of LBT Bancshares, Inc. Litchfield, Illinois

1985 ($) (000 Omitted)

Name of Institution	Current Balance	Amount of Assistance	Acquiring Institution
Missouri Delta Bank Hayti, Missouri	1,917	1,796	Bank of Hayti Hayti, Missouri Subsidiary of Bancshares of Hayti, Inc. Hayti, Missouri
Cardwell State Bank Cardwell, Missouri	1,855	1,240	Merchants and Planters Bank of Hornersville Hornersville, Missouri
Moncor Bank, N.A. Hobbs, New Mexico	84,657	18,750 (1)	United Bank of Lea County Hobbs, New Mexico (de novo) Subsidiary of United Bancshares, Inc. Hobbs, New Mexico
The Bank of Loretto Loretto, Tennessee	2,280	4,306	First Farmers and Merchants National Bank of Columbia Columbia, Tennessee Subsidiary of First Farmers and Merchants Corporation Columbia, Tennessee
First Security Bank of Dickson Dickson, Tennessee	2,106	3,718	Peoples Bank Vanleer, Tennessee
Moncor Bank, N.A. Roswell, New Mexico	12,316	5,857	First National Bank of Chaves County Roswell, New Mexico (de novo) Subsidiary of Rio Grande Bancshares, Inc. Las Cruces, New Mexico
Western State Bank of Denton, Texas Denton, Texas	5,181	4,303	Texas Bank of Denton Denton, Texas (de novo) Subsidiary of Doss Financial Bancshares, Inc. Denton, Texas
Tower Bank, N.A. Hialeah Gardens, Florida	2,485	4,263	The Bayshore Bank of Florida Miami, Florida
Bank of Canton Canton, Oklahoma	5,360	6,643	Community State Bank of Canton Canton, Oklahoma (de novo) Subsidiary of Canton Bancshares, Inc. Canton, Oklahoma
Saratoga State Bank Saratoga, Wyoming	4,208	3,658	First Wyoming Bank - Saratoga Saratoga, Wyoming (de novo) Subsidiary of First Wyoming Bancorporation Cheyenne, Wyoming
The First National Bank of St. Joseph St. Joseph, Missouri	80,887	102,086	Commerce Bank of St. Joseph, N.A. St. Joseph, Missouri
Farmers State Bank in Afton Afton, Oklahoma	971	1,554	Security Bank and Trust Co. Miami, Oklahoma Subsidiary of Second Security Bancorporation Miami, Oklahoma
The Early Bank Early, Texas	3,649	2,914	Texas Bank Early, Texas (de novo) Subsidiary of Early Bancshares, Inc. Weatherford, Texas

(1) Assumption of liabilities

1985 (6)

(000 Omitted)

Name of Institution	Current Balance	Amount of Assistance	Acquiring Institution
First State Bank Jet, Oklahoma	3,314	3,201	Cleo State Bank Cleo Springs, Texas Subsidiary of Cleo Bancshares, Inc. Cleo Springs, Oklahoma
Farmers State Bank Kanaranzi, Minnesota	909	795	Citizens State Bank of Silver Lake Subsidiary of Silver Lake Bancorporation Minneapolis, Minnesota
The Citizens Bank Ogden, Utah	40,228	41,087	Commercial Security Bank Ogden, Utah Subsidiary of Commercial Security Bancorp Salt Lake City, Utah
Early Savings Bank Early, Iowa	3,608	3,716	The Citizens First National Bank of Storm Lake Storm Lake, Iowa
The Aurora Bank Aurora, Colorado	3,985	5,656	Omnibank Iliff, National Association Aurora, Colorado (de novo) Subsidiary of Omni Bancorp Denver, Colorado
Auburn Savings Bank Auburn, Iowa	1,321	1,992	Carroll County State Bank Carroll, Iowa
Northshore Bank Houston, Texas	17,963	17,883	Bank of Woodforest, Houston Houston, Texas (de novo) Subsidiary of Woodforest Bancshares, Inc. Houston, Texas
The Dill State Bank Dill, Oklahoma	6,317	4,718	Home State Bank Hobart, Oklahoma Subsidiary of Home Bancorporation, Inc. Hobart, Oklahoma
Decatur County National Bank Oberlin, Kansas	7,805	7,694	The Bank of Oberlin Oberlin, Kansas (de novo) Subsidiary of Decatur Investment, Inc. Oberlin, Kansas
The Clarksdale Bank of Clarksdale Clarksdale, Missouri	4,063	1,454	United Missouri Bank of St. Joseph St. Jospeh, Missouri Subsidiary of United Missouri Bancshares, Inc. Kansas City, Missouri
Chester State Bank Chester, Texas	1,945	2,058	Bank of East Texas Chester, Texas (de novo) Subsidiary of Bancwell Financial Corp. Chester, Texas
Allen County Bank and Trust Company Leo, Indiana	144	2,304	The Indiana National Bank Indianapolis, Indiana Subsidiary of the Indiana National Corp. Indianapolis, Indiana
California Heritage Bank San Diego, California	5,828	9,743	Grossmont Bank La Mesa, California Subsidiary of Bancomer, CNC Mexico City, Mexico

1985 (7)

(000 Omitted)

Name of Institution	Current Balance	Amount of Assistance	Acquiring Institution
Farmers State Bank of Barry County Exeter, Missouri	1,756	1,705	Security Bank of Southwest Missouri Exeter, Missouri (de novo)
Lake National Bank Lake Ozark, Missouri	4,134	5,858	The Central Trust Bank Jefferson City, Missouri Subsidiary of Central Bancompany Jefferson City, Missouri
First National Bank of Lincoln County Ruidoso, New Mexico	9,574	14,758	First National Bank of Ruidoso Subsidiary of First Alamagordo Bancorporation, Inc. Alamagordo, New Mexico
The Bank of Pana Panama, Nebraska	1,420	1,480	Farmers State Bank Douglas, Nebraska
Farmers State Bank Sargent, Nebraska	2,463	3,383	First National Bank in Ord Subsidiary of B.B.J., Inc. Ord, Nebraska
State Bank of Frost Frost, Minnesota	1,304	1,723	Frost State Bank Frost, Minnesota (de novo)
First City Bank Glendale, California	6,573	8,220	Sterling Bank Los Angeles Subsidiary of Sterling Bancorporation, Inc. Los Angeles, California

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TOBY ROTH, WISCONSIN

May 12, 1986

Honorable Robert L. Clarke
Comptroller of the Currency
490 L'Enfant Plaza East, S.W.
Washington, D.C. 20219

Dear Mr. Clarke:

Thank you for your testimony on May 7, 1986, on H.R. 4701, the "Financial Institutions Emergency Acquisitions Amendments of 1986". The Subcommittee would appreciate written answers to the following questions on issues of interest raised during those hearings.

1. In my letter to you of last week I asked if it would be possible for a nonfinancial institution to avail itself of any of the provisions of H.R. 4701 in order to acquire an insured bank. You answered:

"H.R. 4701 does not address acquisitions by nonfinancial institutions. The purpose of this legislation is to remove those geographic restraints, such as the Douglas Amendment, that currently prevent out-of-state banks and bank holding companies from acquiring a depository institution that is in danger of closing."

I posed the same question to the Federal Reserve, and Chairman Volcker answered:

"H.R. 4701 does not alter in any way the provisions of section 4 of the Bank Holding Company Act that prohibit a nonbanking company from acquiring a bank. Thus, a nonfinancial institution may not acquire an insured bank under the provisions of H.R. 4701. H.R. 4701 permits the interstate acquisition of a failed or failing bank only by a bank holding company."

Finally, Chairman Seidman of the Federal Deposit Insurance Corporation answered the same question as follows:

"It is possible for a nonfinancial institution to acquire an insured bank under existing law and it would remain possible under H.R. 4701. This bill neither authorizes nor prohibits such a transaction."

Please explain the difference between your answer and that of the Federal Reserve and the Federal Deposit Insurance Corporation.

2. In order to clarify certain issues regarding intrastate and interstate expansion rights under H.R. 4701 which were raised during the Subcommittee's hearing on Wednesday, May 7, 1986, please answer the following:

a. Would H.R. 4701 permit an in-state bank or its bank affiliates acquired by an out-of-state institution to expand by branching to the same extent permitted by state law for other in-state banks?

b. Would H.R. 4701 permit an out-of-state bank holding company that has acquired an in-state bank or bank holding company to expand only by purchasing another in-state bank located in one of the three largest metropolitan areas in that state? If so, how long would this limitation remain in effect?

c. Would H.R. 4701 permit an in-state bank holding company acquired by an out-of-state institution to expand by acquisition into another state if that other state's "compact" statute permitted "leapfrogging"?

3. During the Subcommittee's hearings on H.R. 4701, the issue of shareholder's rights in those insured banks "in danger of closing", and of the rights of shareholders in their parent bank holding companies and affiliates was raised. The question arose as to whether under H.R. 4701, the shareholders of "failing" banks (and shareholders of their parent bank holding companies and affiliates) should benefit through "windfall" profits from such interstate transactions.

Please explain and comment upon the rights of these shareholders under transactions anticipated under H.R. 4701, and whether such shareholders should be allowed to profit from such transactions.

Again, I appreciate your testimony and request that answers to the above questions be provided by May 22, 1986 in order to complete the hearing record.

Sincerely,

Fernand J. St Germain
Chairman

FJStG:kTk

Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

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MAY 27 1986

Subcommittee on Financial Institutions

May 23, 1986

Honorable Fernand J. St Germain
Chairman
Subcommittee on Financial Institutions
  Supervision, Regulation, and Insurance
Committee on Banking, Finance, and Urban Affairs
U.S. House of Representatives
Washington, D.C. 20515-6051

Dear Mr. Chairman:

As requested at my appearance before the Subcommittee on May 8, 1986, I am submitting written responses to four changes to H.R. 4701 recommended by James Sexton, Texas Commissioner of Banking. Also enclosed are responses to the follow-up questions raised in your letter of May 12, 1986.

Please do not hesitate to contact me if I can be of further assistance as the Subcommittee considers this important bill.

Sincerely,

Robert L. Clarke
Comptroller of the Currency

Enclosures

RESPONSES TO JAMES SEXTON'S RECOMMENDED CHANGES TO H.R. 4701

Robert L. Clarke
Comptroller of the Currency

1. A failing bank should be defined as one whose capital has declined to the point where it consists only of the loan valuation reserve.

The provisions in the bill regarding the definition of a failing bank are intended to provide a bank's primary supervisor with flexibility to resolve bank failures in the least disruptive and least costly way possible. Thus, we believe that once it is determined that an institution is likely to face a liquidity or capital insolvency, action should be taken at whatever point would achieve the best solution.

The idea that a bank should be considered as failing when its capital consists only of its loan loss reserve recognizes that once equity capital is exhausted a bank is not likely to survive much longer. However, the events that precede a bank's failure can differ greatly, and one specific definition would not work as effectively in all cases.

Ideally, bank examiners could pinpoint when the market value of a bank's capital is exhausted -- that is the point at which the value of assets is just equal to the value of liabilities. Unfortunately, the measurement of an institution's capital is not an exact science. It is often difficult to establish the precise value of assets and to put a value on an institution's contingent liabilities. Moreover, making such valuations through the examination process takes up to several weeks, during which time conditions can continue to deteriorate.

Furthermore, the suggested definition would not authorize the use of the emergency acquisition powers in cases where a bank still had positive capital but faced potential funding problems and was thus in danger of a liquidity insolvency.

2. The $250 million size limit should be eliminated for failed banks.

I agree with the idea of eliminating the size limit for failed banks. Furthermore, I favor making any failing bank, regardless of its size, eligible for an emergency acquisition. As noted in my statement, over 95 percent of the national banks on our problem list have fewer than $250 million in assets. These banks play an important role in the economic life of their communities. Making smaller banks eligible increases the likelihood that, if they fail, the people who rely on the banking services they provide will have uninterrupted access to those services.

Smaller banks are more easily acquired than are larger banks. In the event of a failure or near-failure of a smaller bank, it is more likely that an in-state solution would be found. Only in the most unusual cases would no in-state solution be available for a smaller bank. In that event, I believe that out-of-state capital should be sought if it will lower the cost to the FDIC insurance fund, and possibly avoid failure of the bank.

3. Consideration should be given to providing the FDIC with an expanded "bridge bank" or conservatorship authority.

While H.R. 4701 would authorize us to approve emergency interstate acquisitions of failing banks, we believe that the OCC and the FDIC need greater authority to pursue other options for dealing with failed and failing banks. For that reason, the OCC supports changes in the Bank Conservation Act, as well as giving the FDIC the authority to operate a "bridge" bank.

The OCC currently has the authority to appoint a conservator for a national bank, but the operational restrictions presently contained in the Bank Conservation Act make bank conservatorship largely unworkable. Also, the authority granted in H.R. 4701 would be of little use in resolving a failing bank situation in instances when it is not possible to immediately assemble a bid package, when management fails to cooperate with the bank supervisors, or when an acquisition is not feasible. Therefore, we would favor the amendment of the Bank Conservation Act to allow the appointment of a conservator with authority to exercise the full range of powers possessed by bank management, including the sale of the bank. Several state banking supervisors have this authority and we understand it has worked well.

In failed bank situations where an acquisition is not immediately feasible, we also favor allowing the FDIC to obtain a national charter for a "bridge" bank. This would provide the FDIC with sufficient time and flexibility to arrange for the ultimate disposition of the bank within the framework of the laws governing that new national bank.

4. Emergency acquisitions within a regional compact should be treated as intrastate in nature, and H.R. 4701 should be amended to clarify this.

To a large extent, the bill already recognizes interstate banking regions established by state law. Regarding assisted mergers, the bill recognizes the ability of the FDIC to conduct a purchase and assumption transaction with a within-region acquiror of a failed bank. With regard to unassisted mergers authorized by this bill, a state supervisor would be empowered to give a preference to an institution located within the region and thereby effectively veto an out-of-region unassisted acquisition.

RESPONSES TO CHAIRMAN ST GERMAIN'S MAY 12, 1986 LETTER ON H.R. 4701

Robert L. Clarke
Comptroller of the Currency

1. Would it be possible for a nonfinancial institution to avail itself of any of the provisions of H.R. 4701 in order to acquire an insured bank? (Explain the difference between the answers provided in the OCC's testimony and that of the Federal Reserve and Federal Deposit Insurance Corporation.)

Despite some differences in wording and emphasis, the responses of the three regulatory agencies represent consistent interpretations of the bill. As all of the agencies agreed, H.R. 4701 does not affect the ability of a nonfinancial institution to purchase an insured bank under existing law. While H.R. 4701 does not alter the provisions of Section 4 of the Bank Holding Company Act that prohibit a nonbanking company from acquiring a bank as that term is defined in the BHCA (see Chairman Volcker's response), neither does it alter the ability of a nonfinancial institution to acquire a limited-purpose, consumer, or other nonbank bank under existing law (see Chairman Seidman's response). Rather, H.R. 4701 is designed to provide an exception to the Douglas Amendment and to other provisions restricting interstate acquisitions and mergers of troubled banks.

2(a). Would H.R. 4701 permit an in-state bank or its bank affiliates acquired by an out-of-state institution to expand by branching to the same extent permitted by state law for other in-state banks?

H.R. 4701 retains the current provisions of 12 U.S.C. § 1823(f)(4)(ii) which permit branches of the acquired institution to be retained and new branches to be established in accordance with the laws pertaining to branching by national banks. The National Bank Act, in turn, incorporates the law of the state. Thus, expansion through branching by an in-state bank or its bank affiliates acquired by an out-of-state institution would be permitted to the same extent, and only to the same extent, as for other in-state banks.

2.(b). Would H.R. 4701 permit an out-of-state bank holding company that has acquired an in-state bank or bank holding company to expand only by purchasing another in-state bank located in one of the three largest metropolitan areas in that state? If so, how long would this limitation remain in effect?

H.R. 4701 permits an out-of-state bank holding company to expand only within the three largest metropolitan areas of the state in which the failed or failing bank is located by acquiring additional banks, provided such acquisition would be authorized for in-state holding companies. The bill does not limit the term "acquire" to "purchasing". Therefore, an acquisition could take place by establishing a bank de novo if such a transaction is permitted for in-state holding companies. Also, if permitted for in-state holding companies, a bank acquisition could take place through the purchase of a holding company whose banks were located only in the three largest metropolitan areas. Finally, as noted above, if branching is permitted in the state where the failed or failing bank is located, expansion could take place in that manner. No time limitation is imposed by H.R. 4701 on the authority to expand into the three largest metropolitan areas; on the other hand, the limitations of this bill on the out-of-state holding company expanding beyond the three largest metropolitan areas does not expire with the bill's sunset.

2(c). Would H.R. 4701 permit an in-state bank holding company acquired by an out-of-state institution to expand by acquisition into another state if that other state's "compact" statute permitted "leapfrogging"?

Expansion by the acquired in-state bank holding company into another state is not prohibited by H.R. 4701. Therefore, if that other state's "compact" statute permitted "leapfrogging", the acquired in-state bank holding company would not be prohibited by H.R. 4701 from expanding into that state.

3. **Explain and comment upon the rights of shareholders of failing banks under transactions anticipated under H.R. 4701, and whether such shareholders should be allowed to profit from such transactions.**

H.R. 4701 does not explicitly attempt to control the rights of shareholders in emergency acquisitions. However, we do not believe that shareholders of the failing banks would receive windfall profits in interstate acquisitions authorized under this bill. If the acquisition is assisted, the shareholders of the failing banks would, as a general rule, receive nothing unless the FDIC recovered its expenses and all uninsured creditors were paid off. For unassisted acquisitions, the provision of the bill that allows the state banking supervisor to effectively veto an out-of-state acquisition by certifying that there is a qualified in-state acquiror, regardless of the value of the bid to shareholders, makes it unlikely that shareholders will receive any significant profits. If the bill denied shareholders categorically any possibility of benefit in an unassisted acquisition, it is likely they would refuse to approve the acquisition, thus requiring FDIC assistance and expenditure of insurance funds.

Chairman **St Germain**. Well, I am going to defer at this time and come back for a second round of questioning, because I had hoped that this had brought down to you much earlier, so that you could study it a little bit before I propounded the question. So in order to give you more time, I am going to now go to Mr. Annunzio.

Mr. **Annunzio**. Thank you, Mr. Chairman. I must commend you once again for the hearings and inviting the group of regulators to our meeting.

Now Mr. Gray, I am interested in this proposed legislation of the recapitalization proposal of $15 billion to $20 billion or $30 billion for FSLIC.

Could you please tell me how this is going to tie in with this new 406 Corporation? After all, we are interested in the strengthening of FSLIC and professional people, and the professional approach to selling the assets and getting the money into the FSLIC, is a very commendable approach. I want to tell you that I feel that this is the way to go on a professional basis, and I hope you have a lot of success, but I want you to tell me how you are going to tie it in.

Mr. **Gray**. Well, I think there is a tie-in in terms of our ability to wring every last penny out of the disposition of assets in receiverships or at the FSLIC. And hopefully, in doing so, the contributions which the 406 or asset disposition organization can provide, will be of great help to us in saving money for the FSLIC. They are, I think, about ready to go, or they soon will be. Obviously, they are still building their staff, but they already have been working very closely with us. The people at the Asset Disposition Corp., are going to be negotiating very soon with private sector entities to make possible the disposition of these assets. To the extent that they are successful, and to the extent that they can save money in the disposition of these assets, it will be to the direct benefit of the FSLIC.

Mr. **Annunzio**. In your opinion, will this recapitalization plan put an end to all of this talk about merging the FSLIC and the FDIC?

Mr. **Gray**. Yes, sir. Thankfully, yes.

Mr. **Annunzio**. Tell me, is the FSLIC adequately prepared to manage the influx of capital that the proposal would provide?

Mr. **Gray**. Well, I think that we will be. As you know, we have suffered over these last 3 years from, frankly, not having been given as much staff as we have needed in many areas, particularly, the FSLIC. OMB has granted us rather substantially more human resources in this regard, but it is important to recognize, in my answer to your question, how our system works. We have an FSLIC staff in Washington. Yes, it is true, we have not had enough people, and it has been very difficult to retain people because of the salary classification restrictions that have been imposed on us. And we have had a very high turnover rate. It's been something like 30 percent a year. We do have very dedicated people at the FSLIC in Washington, but let me say this.

Our system functions as a whole, not just in Washington. We have expert supervisory staffs at all of our Federal home loan banks.

In my opening statement I pointed out that from the spring of 1984 through the end of 1986, we will have tripled our supervisory staffs, and we have the ability to attract far more people, particularly to help us, under delegated authority and under the oversight of the FSLIC staff in Washington to arrange mergers, to bring about resolution of cases through the expertise that is available and will continue to be available in even greater numbers.

The supervisory agents in the field are agents of the Federal Home Loan Bank Board. They work directly for the Federal Home Loan Bank Board. And in doing, I think they can be of tremendous help. But it is important for us, of course, before this kind of thing were to happen, to have all of the oversight at the Bank Board, the legal oversight and the policy oversight, to make sure that what is going on in the field, in terms of the resolution of cases, is done according to law and according to policies that reflect law.

Mr. ANNUNZIO. My time has expired. I had some other questions for Mr. Sexton, the State banking commissioner, but I will wait for the next go-around.

Chairman ST GERMAIN. Mr. Wylie.

Mr. WYLIE. Thank you, Mr. Chairman.

Under Secretary Gould, on page 6 of your testimony, you go to considerable effort to explain the budgetary treatment, and I appreciate your direct discussion of why the equity investment or the contribution from the 12 FHL banks into FSLIC should be treated as a budget receipt. I know there was some discussion for a while on this question as to what the treatment should be. The bulk of the funds, as I understand it, would be in the form of nonredeemable capital certificates, which FSLIC would never repay. The remainder, up to $3 billion, may or may not be paid back, depending on FSLIC's reserve-to-deposits ratio.

Could you please expand on why you have any concern, or might it just be an extra precaution that you are taking?

Mr. GOULD. Well, we are trying to be especially prudent, given the Congress' sensitivity to budget affairs at this time.

Mr. WYLIE. I understand.

Mr. GOULD. The problem traces back to the fact that any FSLIC outlay in resolving cases is a budgetary outlay, and we are trying to ensure that there are offsetting receipts, so there is not a net impact upon the budget. This is a new transaction, the structure is new, the form of the money coming into FSLIC is new. Often there is confusion about new transactions, and we had heard that CBO had focused on some earlier discussions and press reports, where the phrase "borrowing" was often used and that CBO, quite correctly, was concerned about borrowing, because borrowing is not a receipt.

So we have made, in light of that, a real effort here to structure the legal and financial relationships to avoid that issue. The fact that FSLIC gets these billions without having to pay back the capital certificates and only possibly having to pay back the $3 billion in capital, we feel, goes a long way toward that.

Now we also understand that there is often a problem of precedent, and we think that this is a very difficult structure to replicate in another transaction. So we don't feel that any bad precedents would be set by scoring this money as a genuine receipt.

It is also, I think, interesting to look at—in double entry bookkeeping, look at both sides here, to notice how it will be accounted for on the books at the home loan banks: as a contribution to this funding entity. If it is a contribution on the part of the banks to the funding entity, it seems to us only logical and proper accounting that therefore, it is a receipt to FSLIC. We think it has been carefully structured and genuinely structured, and we believe that these moneys should be an offset to the expenditures on the part of FSLIC in resolving cases.

Mr. WYLIE. Is CBO in agreement with you now?

Mr. GOULD. We have had no direct contact with CBO on this, sir, but our intention was, in conjunction with the appropriate people from the Banking Committee or Banking Committee staff, to approach CBO after this hearing.

Mr. WYLIE. The treatment certainly sounds reasonable to me, but I noticed that, as I say, you did go to considerable length to explain it.

Mr. Clarke, a little earlier, the chairman mentioned the $250 million threshold and indicated that there were some banks in Texas, I guess, who didn't think that the $250 million threshold was enough. I might also say that the Independent Bankers Association, which is made up of a lot of small banks, testified just this week, that the $500 million threshold should be retained, as did the Conference of State Bank Supervisors, and I was of the opinion that if there is really a serious problem, that maybe there ought not be any threshold. That's where I was coming from, initially.

Now we were told that there are four States that have no banks over $500 million.

Can you tell me if there are any States that have no banks over $250 million?

Mr. CLARKE. Mr. Wylie, let me look just a second. I may have that here.

Mr. WYLIE. Do you know, Mr. Sexton?

Mr. SEXTON. No, sir, I do not.

Mr. WYLIE. The point I am making is——

Mr. CLARKE. I don't have that information at hand, but I could certainly get it for you.

And I would agree with you that if the objective of this legislation is to deal with a problem, we should deal with the problem of whatever size. To the extent that we have built in safeguards for in-State solutions and clear preferences for in-State solutions as a practical matter you are going to have an out-of-State acquisition only when there is no in-State solution. And in theory, the smaller the bank, the easier to effect an in-State solution.

Mr. WYLIE. That sounds reasonable to me.

I have been given a note that my time has expired. I will get some more questions in on the second round.

Chairman ST GERMAIN. Mr. Barnard.

Mr. BARNARD. Thank you, Mr. Chairman.

Mr. Gould, concerning the proposal from the Home Loan Bank Board and the Treasury for the FSLIC recapitalization, does it place some sort of moratorium on conversions by thrifts from FSLIC to FDIC insurance?

Mr. **Gould**. No, sir, that is not specific to the legislation which we will have up to you in a matter of days, nor is it a part of this proposal, although as I believe I mentioned in earlier testimony before this committee, that is a trend which concerns us.

The reason we did not specifically address it here is we feel the recapitalization of FSLIC is a very important thing to be achieved in this year's session of Congress, and we wanted to keep it as free of controversy and controversial proposals as we could, feeling that that subject you just raised is worthy of further study and perhaps should be addressed at some future time, but that it is not part of this.

Mr. **Barnard**. Isn't it possible, though, that some strong S&L's would be induced to leave the FSLIC, thus depleting the assessment and endangering the interest stream to the Financial Corporation?

Mr. **Gould**. Yes, sir, that is true, and that would be worrisome to the integrity of this plan. It would also, I think, raise issues of equity, whether someone should be able to move away from FSLIC and go to the FDIC and still retain the benefits of membership in the Home Loan Bank System.

Where we did try to address it here, without addressing some specific prohibition, is by trying to have a fairly rapid phaseout of the special assessment. We seek to create a feeling that FSLIC is going to be replenished so as to reduce motives of healthy thrifts to leave because they might feel that the special assessment was going to be put upon them into the indefinite future.

So this plan tries to take a financial burden off the S&L's or at least tries to specify the time they must deal with such burdens, and that I think in itself will be a help. That would also be a help in perhaps inducing interested buyers to come in from outside the industry.

Chairman **St Germain**. Would the gentleman yield?

Mr. **Barnard**. Sure, Mr. Chairman.

Chairman **St Germain**. Thank you.

Well, now tell me, in the case that our colleague mentions, Mr. Barnard, if an S&L elects and determines, say, they want to go from FSLIC to FDIC, they have grandfathered along with that transfer all those powers and everything else that they have had under the holding company and within their service corporations that are more liberal than those that they have under the bankholding company.

Is that not the case?

Mr. **Gould**. In terms of powers beyond the Garn-St Germain Act?

Chairman **St Germain**. No, no, powers that——

Mr. **Barnard**. Beyond the Holding Company Act.

Chairman **St Germain** [continuing]. Are beyond what the commercial bankholding companies have, the S&L company, and if you would answer this just yes or no.

Mr. **Gould**. That could be true if the S&L becomes a State savings bank, but not if it becomes a commercial bank.

Chairman **St Germain**. OK. So that, you know, I think perhaps you should at least send us some suggested language should there be members of the committee that might want to offer that amendment.

I thank the gentleman for yielding.

Mr. **Barnard**. Mr. Gould, likewise your testimony indicates that the home loan banks estimate that the Financing Corporation's debt will yield a half to three-quarters of 1 percentage point above treasuries of comparable maturity.

Stated another way, the financing corporation will have to pay one-half to three-fourths points above comparable treasuries to market its long-term bonds:

How realistic are those numbers?

Mr. **Gould**. Well, that is an interesting question, sir. I think it is going to be hard to tell until this entity is specifically set up and until it is discussed in the financial community.

I believe there is a piece of Wall Street jargon that would apply here, and that is that the issues put out by the Financing Corporation are what they call in Wall Street story bonds: A story bond is something you have to sit down and explain to someone, tell them the story of it. At least in theory, or so the Wall Street dealers will tell you, you have to pay more interest on story bonds, because it is not evident on its face as to the credit of the bonds.

I rather think that is overdone here, and it would be my expectation that at least following some initial offering, that these bonds could be sold at closer rates because the defeasance mechanism will be quite certain, the interest cost on the bonds will be provided by a dividend stream from FSLIC, which is a Government agency, and in my view these bonds should sell in the market much closer to treasury yields than would be indicated by 75-basis points.

Mr. **Gray**. I think we at the Bank Board and in the Bank System agree with that. There might be an initial effect of the type that you are talking about, but as the Wall Street community became more familiar with this the differences would be less.

Mr. **Barnard**. One further question on this particular bill, Mr. Gray.

A portion of the FSLIC assessment is to pay for the dividends to the financial corporation, which in turn is to provide the income stream to financial corporation bondholders.

Now, we have been furnished a projection of total deposits in the system, indicating a 10-percent growth each year through 1995, which I understand is the rate used in the President's budget.

Is it realistic to assume that growth rate unless there is some prohibition again on institutions changing from FSLIC to FDIC insurance?

Mr. **Gray**. Well, let me answer that question by questioning the figure of 10 percent. We feel it would be closer to 8 percent, and that, by historical standards, going back over a long period of time, would, it seems to me, be more realistic.

Mr. **Barnard**. But still, you are not concerned then that these figures become unrealistic if there is not some prohibition on this move from FSLIC to FDIC?

Mr. **Gray**. Well, I think for those institutions which might choose or entertain the thought of jumping from the FSLIC to the FDIC in order to escape any special assessment obligations that otherwise occur in this plan, I would be obviously concerned about that because in this case the institutions really could be having their cake and eat it, too. Obviously a continuing liability base which generates premiums, which really make the program work over a long period of time, is very, very important.

Mr. **Barnard**. Mr. Gould, you indicate that the language for this bill is going to be ready in several days.

Is it the opinion of Treasury that this bill, along with Mr. Gray's bill for additional powers should move in concert?

Mr. **Gould**. Well, we consider the FSLIC problem what I would term a real time problem. It exists now, and it, in our view, should be addressed now, and to that extent we are not anxious to see anything that would slow down the passage of this bill through the Congress.

So we have sort of a purist view, if you will, in that sense.

Mr. **Barnard**. But you are not suggesting that this bill be considered at the same time of the regulators' emergency bill, are you?

Mr. **Gould**. No, sir, I am not giving advice to either the House or the Senate with respect to how they should do it. Merely, I am saying that I feel it is very important to have it enacted expeditiously in whatever form this committee would feel appropriate.

Mr. **Gray**. Let me just give my views on that.

We have an administration bill, which is supported by the Bank Board and which we have helped to develop. That bill of course stands on its own.

There are other elements of any legislative program which the Congress, this subcommittee can certainly consider. Obviously, from our point of view, by far the most important aspect of any approach with respect to FSLIC is the FSLIC recapitalization program, and we would not want anything else to get in the way of passage of that.

There are, at the same time, other provisions which the committee in its wisdom might want to consider as it constructs in its own way any legislation.

Mr. **Barnard**. My time has expired, but I am hoping that my colleagues will certainly address the questions of farm banks, thresholds, the three largest area expansion, and the meaning of failing in case I don't get back to myself.

Thank you. [Laughter.]

Chairman **St Germain**. Mr. Roemer.

Mr. **Roemer**. Thank you, Mr. Chairman.

Two questions, one of the recapitalization idea.

It has been characterized, I think, in the Washington Post as late as yesterday that this was a bail-out—was their headline word—and I would like you to address that.

Now, I warn you that my personal feeling is that it is not. I am sympathetic to the plan, and I have seen just a few of the particulars, but I like the thrust. So I don't come unfriendly with the question, but I think it needs to be addressed.

Is it a bail-out? If not, why not?

Mr. **Gould**. I think that it is an excellent question, and I appreciate the chance to address that.

To me, the term "bail-out" implies that an industry or a group of people turn to somebody else's money to take care of the problem, and that is distinctly not true in this instance.

This plan is totally based upon industry money in the form of assessments on the S&L's and in the form of investment from the

Home Loan Bank System, which is an integral part of the S&L industry. All of this cost will be borne, therefore, by the industry, broadly defined.

That, to me, is not the definition of a bail-out. That, to me, is an example of a splendid bit of self-help.

Mr. **Gray**. I would agree completely. I don't consider this a bail-out in terms that normally you in the Congress consider a bail-out, where additional appropriations are required.

Mr. **Roemer**. Thank you, Mr. Gray.

The second question has to do with the other gentlemen of the panel, and I very much appreciate your testimony.

I know regulators in general and your regulators in particular are under a great deal of pressure. These are not easy times.

In the emergency changes and powers that you are recommending that the Congress approve, once again I am sympathetic to what you are trying to do.

Two questions related to you three gentlemen. One is:

Some statistics were given as to about 400 banks being brought under terms of eligibility if these changes are made.

Did I hear that correct?

Mr. **Seidman**. That is correct, in excess of 400.

Mr. **Roemer**. In excess of 400.

You said some 20 were on a—I forget how you characterized it.

Mr. **Seidman**. 29.

Mr. **Roemer**. 29 in trouble?

Mr. **Seidman**. On our problem bank list.

Mr. **Roemer**. In your problem bank list.

Are they located in a particular geographical region of the country, or is this a problem spread out across America? It has been related in this subcommittee that it is a problem for Texas, Louisiana, Oklahoma, and a few other States.

Am I exaggerating that, or is it widespread?

Mr. **Seidman**. Well, we have tried not to be too specific in these areas simply because, in our judgment, that might further the problems in the area involved, but I think it is reasonably apparent that it focuses in the areas that are involved with the energy and agricultural problems.

Mr. **Roemer**. Fair enough.

If that is true, there was questions yesterday of Mr. Volcker—and I was at the hearing myself and heard them—that said that why should someone in Ohio or Indiana or Maine be concerned with changing statutory law to allow a fairly limited geographical area the "benefit" of these changes?

Would you like to respond to that?

Mr. **Seidman**. I certainly would.

The basic thrust of this law is to allow the FDIC to increase the number of bidders and therefore reduce the cost. That cost is the cost of all the other bankers in the country because as we reduce the cost of bank failures we are able to pay to all the other bankers a rebate on the premiums that they pay us. So they have a very direct interest in reducing the cost because it reduces their cost of operations.

Mr. **Roemer**. OK, fair enough. Final question for me.

I know that energy and agriculture, when overlaid, yield an enormous problem, but the problem changes sometimes quickly with time. For example, the price of a barrel of oil is up 50 percent from a 35-day low, 35 days ago, and so it can change.

I am wondering if—and I asked Mr. Volcker yesterday. I would like to ask you the same thing—I am wondering if the regulators have the capability or the desire to allow banks under pressure some reasonable time for agriculture and energy prices and prospects to stabilize before we perhaps by the book and arbitrarily shut down their operations. That, too, might accrue to the benefit of both the integrity of the system and the future of these banks.

Would you respond?

Mr. SEIDMAN. Well, I can respond to that.

That is what we attempted to do with our joint statement, in which we allowed forbearance with respect to capital requirements for agriculture and energy banks, and it was specifically designed to meet the problem of a cyclical economic problem which we believed could be cured over time, and therefore the forbearance was for the purpose of allowing banks to go below the normal standards, but with the expectation of normal economic recovery they would have plans to recover and reach normal standards again.

Mr. ROEMER. Well, I appreciate that. I am going to push it a step further because I am out of time, but I don't get here often.

I understand the need——

Chairman ST GERMAIN. We are always glad to have you.

Mr. ROEMER. Thank you, Mr. Chairman.

You have got to put the integrity of the system first, and I stand with you on that. No problem.

There are examples in the part of the world from which I come where my bankers have told me that the regulators have forced them to write off, write down, shut down, shut out loans that the community feels that time will yield some positive results to the institutions.

I don't want to make a mountain out of this mole hill, but if we have the capability of doing that, it would seem to me to be as important to the long-term future of the banking system as these emergency changes that you are proposing.

Mr. SEIDMAN. Well, we certainly attempt to deal with that, and it deals with what valuation we use for loans, and that depends upon how we arrive at a valuation in a chaotic market, in a market which is very difficult to arrive at any firm determination.

We have certainly instructed our people to take into account the chaotic market and not necessarily to be swayed by one particular sale or the last sale, but to try to take a longer look.

Mr. ROEMER. Right. Well, you know that—I am out of time.

Chairman ST GERMAIN. The time of the gentleman has expired.

Mr. ROEMER. Thank you, Mr. Chairman.

Chairman ST GERMAIN. Mr. McKinney.

Mr. MCKINNEY. I'm sure mine will be 5 minutes, so I will sort of jump around a great deal, gentlemen.

But I would simply say that as a quiet observer of this process, in about 4 years now, I've watched us go from net worth certificates, which are pieces of paper that don't mean anything, say they do, and people accept them, but it is a wonderful idea, to a 406 Corporation, Ed, and I wonder what the—I am delighted you hired—the Board hired who they hired, and that they have a very competent person running it, but I also wonder what it is going to morale to have a $250,000 a year salary running an organization that buys bad debt, while everyone else is working 14 and 16 hours a day and not getting paid squat. But your heroism is appreciated by the taxpayers.

Now we are at Ponzi, and George, I've got to say, it's the most brilliantly convolulated way of turning nothing into something I've ever run across, but it is a wonderful idea, I guess who's time has come. [Laughter.]

Boy, if Mr. Samuels' first book—we all ought to go back and read it.

Mr. GOULD. Should I respond to that now, sir, or later? [Laughter.]

Mr. MCKINNEY. If you'd like to. [Laughter.]

Mr. GOULD. Well, obviously, I take strong issue with that comment, because the "something" that is very important here is a stream of future assessments on the S&L's amounting to billions and billions of dollars, which we have merely capitalized into present availability, much the way, sir, if I may say so, that Americans are familiar with through a home mortgage. If you need the money to buy a house now, and you haven't saved it up from the past, what you do is, you take out a loan and buy the house and amortize the interest paid on that loan, principal and interest paid over time, from an expected stream of future earnings, individually.

This is a very close model to that, where we need the money now to get at the problem, we raise it by borrowing much the way a mortgage would be raised, and we put the debt out of existence by using the future stream of assessments on the industry. Except, we go even a further step to give this plan integrity, so that people are sure it is paid off, and that is, we use part of the money at the front end to buy a defeasance mechanism, which goes a long, long way toward guaranteeing the payment of this debt, but guaranteeing it by the defeasance mechanism itself and keeping the government and FSLIC's guarantees out of it.

So to me, this is the antithesis of Ponzi, but is, in fact, a plan which I find, having observed from a distance, is somewhat unique in government. It raises the money to solve the problem. It services it properly and it puts itself out of existence when it is no longer needed.

Mr. MCKINNEY. Well, you will find me one of your strongest allies in this plan, and I just happen to love the word Ponzi, but I think that we—this is it, gentlemen. I have watched the downhill slide, and I would have to say, Mr. Gray, that I am very concerned about another prospect of this, and I think it goes to both of you, that off all these banks, and by the way, we could talk threshold. I know that the gentlemen from some States probably think a threshold will keep New York City from taking over their State, but I don't know why there is a threshold at all. If there is a problem, it's a problem, and it ought to be answered, and it doesn't make any difference whether it is a small bank or a big bank or what it is, but it's very important to someone, somewhere. But it bothers me that—I guess, today, to have today's American banker, Dallas, TX, the regulators force out a group of managers, because—and it reads like an epitaph. It's the same thing in Connecticut, Texas, wherever. Bad real estate, bad commercial loans. Grows too fast.

Now at least regulators seem to have gotten rid of these guys before the collapse rather than after the collapse, and that, I congratulate you for. But how many of these things are going to be taken over by people who then leave the system?

That's what bothers me. How many people are going to buy S&L's and then pack it to become something else?

Mr. GRAY. You're asking how many people are going to come into the thrift system, operate institutions unwisely and leave?

Mr. MCKINNEY. No; I am more interested in it if they're saved, at least cost to you and brought over by another institution, how many are going to keep them in your base, which is so important for this program and so important for you that you have a vital strong base of S&L's? How many people are going to remain S&L's?

Mr. GRAY. Well, I think the assets will continue to remain in the industry. There may be, obviously, some consolidation involved, but the assets and liabilities are going to continue to remain. Obviously, a base is an important part of maintaining the liabilities necessary for the premiums to make this program work.

You may have noted in the testimony that I submitted yesterday, the written testimony, one of the enforcement provisions which we have described and which we support, would enable us to remove officials for personal dishonesty and a continuing disregard for the welfare and the resources of the institution before there is harm to the institution.

We have recognized the same problems. I believe that you were recognizing, and you are aware, of course, of the number of the actions that we have taken. We have recently proposed additional regulations. Among them, we have proposed a means by which the industry could gradually move their capital requirements, minimum capital requirements up to 6 percent in 6 years. We've also built into that proposal a risk-based capital element, whereby greater reserves would be required for institutions with riskier activities. These proposals are intended to protect the integrity and the financial strength of the institution.

Mr. MCKINNEY. I wonder if they don't—though my time is expired—I wonder if they don't, why they protect the existing institutions, if they don't make acquirers of really troubled institutions, find it more unattractive to stay what they originally were and leave the system, and I am terribly worried about your base. I really am.

Mr. GRAY. Well, I share that concern, and that is why, in the testimony, I have raised these concerns, forthrightly. We must have a continuing liability base for the premiums that are generated over a long period of time to make this program work.

For example, I am concerned about bank holding companies acquiring thrifts and particularly healthy thrifts and then taking them out of our system, converting them to banks.

We have a fine charter in the thrift industry under Garn-St Germain, but apparently these types of conversions are beginning to happen, and it does concern me.

Mr. **McKinney**. Mr. Chairman, my time is expired, but I can't help but be amused by the disposition of the FSLIC and the FDIC at the table. In other words, Mr. Gray doesn't want to give Mr. Seidman any more business. [Laughter.]

Mr. **Seidman**. And we're not trying to take any of his business. [Laughter.]

Chairman **St Germain**. Mr. Parris.

Mr. **Parris**. I want to congratulate these gentlemen for their presence here today and on their collective determination to address this recapitalization problem of FSLIC. Some of us have attempted to motivate appropriate persons in this town to focus on that problem for sometime.

Mr. **Gray**. We have been motivated for a long time by our program.

Mr. **Parris**. I understand that, Mr. Gray. It is important—as we agree, it is important, critically important for the thrift industry.

To me, the bottom line of this whole issue is, what is the magnitude of the problem? Mr. Gray says on page 4 of his testimony that estimates have ranged from $5 to $27 billion. The number was used in the testimony several months ago, 22.5. The number has been used in other testimony, 25.

And I have a question for Secretary Gould, that if the total obligation exceeds even the maximum flexibility of the plan with something around $25 billion, if it does, in fact—if, as the case resolution history determines that we have exceeded the capacity of the industry to clean up its own problem—to pursue some of the questions that were asked earlier by others—would we then have no alternative to go, but to go to public funds? And stated another way, if, under a worst case scenario, you have underestimated the cost of case resolution over the 5 years, is it reasonable to believe that the credit market then would let you come back and borrow additionally? Would you agree that this is essentially, Secretary Gould, the last hope short of merging the two insurance funds or—and/or—opening up the U.S. Treasury?

Mr. **Gould**. Well, it's interesting, Mr. Parris, that the chairman's earlier question was that the U.S. League says the problem is much smaller, and are we raising too much money and burdening FSLIC with too high interest costs?

The size of—let me try to answer it and just take a moment, because I think it is——

Mr. **Parris**. You do understand my time is very—is severely limited.

Mr. **Gould**. I do. I'll try to be very quick.

The answer is that nobody sitting here today can pinpoint the size of the problem. There are too many variables. They change. It is a moving target.

Mr. **Parris**. Exactly.

Mr. **Gould**. Real estate conditions. In the Southwest, oil producing may have gone down. Conditions somewhere else may have improved. Interest rates have gone down in the last year 400 basis points. That's helped.

What we tried to do, since we, nor no one else, can pinpoint that for you, was to create a plan which had a wide range of ability to handle, depending upon what the Home Loan Bank Board finds when it starts getting in and resolving these cases. And that is going to be the test.

We have built in here, however, some very conservative assumptions. We have built in resolution costs that are much higher than the recent experience of the Bank Board which, indeed, has been higher than their earlier experience. We have talked about 20 to 30 percent cost of resolution.

Last year, I think the cost for FSLIC was on the order of 15 percent. So it is very conservative. If the U.S. League is right, and it is small, FSLIC never has to burden itself with interest costs. It simply draws down less, in stages. Likewise, by having longer maturity zero-coupon bonds, we could stretch this to $30 billion. So there is an infinite variety between zero and $30 billion.

Now if you say to me, the problem is—you're going to get in there and find it's $50 or $60 billion, can you handle it this way?

Well, this has been, by definition, an industry-based solution, and there is a limit clearly to how far the industry can go.

Could it, if it was $35 billion, stretch a little further? Perhaps so, depending upon the conditions of the industry that then exist. But if you are sort of giving me the imponderable that it goes much beyond that, then I think the answer is, we'll have to look to other solutions, but I don't think, necessarily, that those solutions are the merger of FDIC and FSLIC nor necessarily the public purse. We have testified earlier that we hope some of the barriers of entry here could be eased so that outside bodies of capital could come in and put up some of the money to ease the burden on FSLIC.

I think it is hard to say, specifically, what level the industry could handle, but this certainly is a level beyond the industry, and we will have to look to other sources.

Mr. **Parris**. The real question is how much garbage can you put in a 2-pound garbage bag? [Laughter.]

That is the real question.

Mr. **Gray**. Let me just say, if I may, though——

Mr. **Parris**. Briefly, please.

Mr. **Gray**. The GAO study talked in terms of a $22 billion problem. Our assessment is that it would be around $16 billion, but it could be greater, and of course, we've built in a margin to handle that.

Mr. **Parris**. Well, I don't intend to be critical.

Mr. **Gray**. Yes.

Mr. **Parris**. It's impossible for any of us to quantify the magnitude of the problem. The only suggestion I make—and the time really flies around here somehow. It flows away—but just to finish my sentence. When you've got 1,400 institutions that are insolvent or inadequate capitalization, that sort of thing, whatever the number—so it is 1,100. It's a very large number, the magnitude of which we cannot quantify, none of us, nobody, not the greatest experts in the world. When you've got $400 billion worth of assets and a 15-percent history—traditional history loss—and as I understand it, there's cranked into this process something like 20, 25 percent recovery on assets, it makes a little bit of——

Mr. **Gray**. That's not correct. It's not 25.

Chairman **St Germain**. The time of the gentleman has expired.

Mr. **Parris**. Thank you.

Chairman **St Germain**. I observed to the gentleman, that little card that says "Your time is expired," is like the Sun, it shines on all of us.

Mr. **Wortley**. Thanks, Chairman St Germain.

Mr. Gray observed here a while ago that he had shifted his examiners out from beneath the pay cap. I don't think Comptroller Clarke has had the luxury nor Chairman Seidman. Mr. Comptroller, are you experiencing any hardships as a result of your people being under the pay cap, while Mr. Gray's are not under the pay cap?

Mr. **Clarke**. It is a challenge trying to run a professional staff of bank supervisors with or without competition from a fellow supervisory organization. That challenge existed——

Mr. **Wortley**. He's keen competition for you.

Mr. **Clarke**. That challenge existed before Chairman Gray was able to come up with his imaginative solution to the problem, on which I congratulate him. It is a very excellent solution. The problem is that I don't have access to the same solution. And I would just say that it does create an even greater difficulty for us when there is a crying need for competent bank supervisors. I hope that we have some of those, and I know that the FDIC has some of those, but there is a natural tendency for such people to move to where the highest compensation is. Heretofore, that's been other financial institutions. Today, it's also other bank supervisory agencies. And it does create a hardship for us.

Mr. **McKinney**. Would the gentleman yield?

Mr. **Wortley**. I yield to the gentleman from Connecticut.

Mr. **McKinney**. Government is the only business where we are so addlepated, we don't go somewhere for money. [Laughter.]

Mr. **Wortley**. I thank him for his comment.

Chairman Seidman, would you also comment? Are you having a comment over there at the FSLIC?

Mr. **Seidman**. Well, we have two problems in this regard. First, we are not directly under the pay cap at the present time, and therefore, we have to meet competition, and I must say the chairman's new plan is finding some of our people eager to join him, but frankly, I am delighted to see that organization moving in that direction, so we grit our teeth and go along with it. The more serious problem is that OMB has now asserted that they wish to put us in the same position that Chairman Gray was in. And that, I think, since we would not have a way to get around it through any banks, that would be a real disaster for the bank supervision system, and we are currently in discussion with them, and we certainly would appreciate any interest that you might want to take in that problem.

Mr. **Wortley**. I think we better elevate the interest level up here on the Hill.

I wish you good luck in your pursuit.

Let me go to Mr. Gould and Mr. Gray. You gentlemen did testify that if we don't recapitalize the fund, FSLIC would need to continue deferring resolution of many of its problem S&L's. You note that prompt handling of the most debilitated S&L's should help healthy S&L's by lowering their cost of deposits, which has been bid up by the feeble S&L's call for funds at any price.

How do you intend to resolve these problem cases? Will these institutions be closed up? Just what do you have in mind?

Mr. **Gray**. What we are always trying to do is to save as much money as we can for the FSLIC. There are some cases where a merger is simply not possible. The most expensive cost to the FSLIC is liquidation.

But, sometimes, there is no alternative to that. But, wherever possible, we seek other solutions. We try to find acquirers, acquirers which are willing to help us save money by reducing the cost through the franchise value that they get through the acquisition, by reducing the costs to the FSLIC in the form of assistance.

And that is going to continue to be our game plan, as it must be, obviously.

Mr. **Wortley**. What's the premium that healthy S&L's are now paying, and how does that compare with what the commercial banks are paying?

Mr. **Gray**. You mean, for——

Mr. **Wortley**. Well——

Mr. **Gray**. It depends of course on the part of the country that you're talking about and also the health of the individual institutions, but generally speaking, thrifts are having to pay higher costs for money as a result of the many institutions out there that have to pay a higher cost themselves.

So the competitors, therefore, end up having to pay a higher cost. If we can stop deferring resolution of these cases, and find solutions, then I think over a period of time, we're going to find ourselves in a position where our healthy institutions can indeed compete with commercial banks rather than the more unhealthy institutions, which is causing the additional cost for all of our institutions.

Mr. **Wortley**. A serious dilemma.

My time has expired. I thank you, gentlemen.

Chairman **St Germain**. Mr. Bereuter.

Mr. **Bereuter**. Thank you, Mr. Chairman.

Gentlemen, thank you very much for your testimony. I'll concentrate just on a couple of things. One, the ability under this legislation for the acquiring bank to expand into three SMSA's within the State, I think, is not a good approach.

I'm going to try to amend it. I'd just as soon have your best advice as I attempt to do it, so that I need what you think needs to be achieved.

It's very differential. It may work for Texas, but in high concentration States, States like Nevada, Colorado, Utah, where a very high proportion of the State's population are in three SMSA's, it's a much different matter.

So I would think we might have some ability to reach up to a certain population percentage within a State, and amend it in that fashion.

The Census Bureau basically sets the change, and some States don't even have three SMSA's. So I'm looking for a way to achieve what you want to achieve. This is not the approach, I think, because it's so different from State to State and the high population States are not necessarily the States with the highest concentration of population.

I'd also say that some people talk about eliminating the threshold. It seems to me that, even though that has its initial glamor for farm State banks, it also means that you could move into practically most of the State's population area in the process.

Now, I want to go to a specific question and invite any of you to give me a better approach than the SMSA approach.

Yesterday, Chairman Volcker said, in a response to our colleague from Iowa, Mr. Leach, that he could live with the $500 million threshold plus, or the top four, but frankly would prefer to have more than just the top four.

I'd like to get the comments of Mr. Seidman, Chairman Seidman, Mr. Clarke, at least you two gentlemen, what you think about that statement and whether or not you think that would be acceptable.

Mr. SEIDMAN. I would agree with Chairman Volcker's statement that we could live with that, although I think forced to limit the number.

Mr. BEREUTER. Mr. Seidman, while you're speaking, I'm looking very carefully at this Talmage, KS, example, where the FDIC moved just in the last month.

And knowing the criteria you used, traced back to 1983, could some adaptation of that be available for small agricultural banks?

I want you to think about that and perhaps give me a response, if you could. But perhaps not now if you want to take your time with it.

Mr. SEIDMAN. Well, I can respond by saying that type of transaction is available now and would be available to any bank that can meet the criteria that we put out.

And so that's another method of meeting a problem, but it's a difficult one in that they have to come up with capital in the community, with acceptable management and with elimination of the shareholders who were losers because of the way the bank was run.

So it's available, but it's not easy to meet the criteria.

Mr. BEREUTER. That's right. It's never been the case in my State, nor I think in Iowa. One of those criteria has always been the problem, and maybe it should be the problem. But if there's some adaptation that might work, I'd appreciate knowing about it.

Mr. Clarke, what would be your reaction to Chairman Volcker's statement yesterday?

Mr. CLARKE. The proposal, as I understand it, put to Chairman Volcker was to retain the $500 million asset threshold but also make the four largest institutions in the State eligible. It seems to me that's a different issue from the one you were addressing earlier.

Mr. BEREUTER. It is different.

Mr. CLARKE. On expansion.

Mr. BEREUTER. It is different.

Mr. CLARKE. What we're trying to do here is solve problems at the least cost to the FDIC and the least cost to the system. The extent to which you limit the array of banks that can be acquired under the emergency provisions restricts our ability to deal with those problems. I suppose we could live with anything that would be an improvement over what we have now. But I would resist the notion of restricting the universe of banks that are eligible for acquisition under the emergency provisions.

As I said earlier, the smaller the bank, the easier presumably it is to effect an in-State acquisition. So I really don't think you are opening the world wide to interstate banking by taking down those barriers. What you are doing is allowing the FDIC to resolve a problem when there's no other solution for the problem short of closing the bank.

Mr. **Bereuter**. Well, if you buy a small Colorado farm bank, out of State, you open up metropolitan areas that constitute probably over 70 percent of the State of Colorado's population.

It's a very, very attractive purchase for the first few banks. So it seems to me you have to have some kind of threshold.

But, I guess you're saying no, you can't live with it, or, yes, it's a partial step?

Mr. **Clarke**. It is a partial step. Maybe this would be a good place for me to respond to Mr. Wylie's question about the number of States that have no banks in the $500 million and $250 million category. There are three States that have no banks over $500 million. All States have at least one bank over $250 million, but there are several that don't have many. So you're really narrowing the number of banks.

Mr. **Bereuter**. My time has expired.

We were told there were four—Montana, Wyoming, North Dakota and West Virginia. So we'll have to figure out which one is not the case.

Chairman **St Germain**. Ms. Oakar.

Ms. **Oakar**. Thank you, Mr. Chairman.

Mr. Clarke, in your statement, you say on page 5 at the bottom:

> Because banks play an important role in the economic life of their communities, we believe that it's critical that the FDIC have maximum flexibility in resolving any problems they experience.

My question is interrelated to the discussion today. Basically, the thrust of this bill is to give you expanded regulatory powers, which, you know, could be debated.

That's what we're here about in terms of the hearing. But, on March 26, the chairman and myself sent your office a letter requesting information on institutions that up-scale or seek to serve only affluent customers.

We also sent the same letter to Mr. Gray, and he has responded that, in a couple of weeks, they'll be giving us the information.

Mr. Seidman's office already sent us their response. But, we understand on a staff level that you won't provide the information to this committee.

Why should we give you more regulatory power if you won't respond to a reasonable request by the chairman and other members?

Mr. **Clarke**. I'm not aware that we indicated that we would not respond to a reasonable request for information.

Ms. **Oakar**. The letter's more than a month old and when we called, that's the information we had, that you would not respond.

I think we have to focus on this because what I'm concerned about is that we give you more regulatory—in the plural sense, more regulatory power.

But, that the only individuals who are bailed out are the stockholders, not consumers. I am concerned about the law cases in California and other places concerning service fees and, you know, consumers are becoming very outraged by what they perceive on the part of some institutions—certainly not all to be irresponsible charges, under deregulation.

I would like you to check into the letter, if you're not aware of what I'm talking about. I have a copy here I'd be happy to hand to you.

Mr. CLARKE. I'll be glad to check into the letter because I certainly don't want us to be in the position of not responding to reasonable requests for information.

I would like to make one comment though with respect to your suggestion that shareholders are being bailed out. Under the proposal that——

Ms. OAKAR. No. I said that could conceivably happen. If you're not as consumer-oriented in terms of the people that have always been the benchmark for consumer participation in success of these institutions, I wonder who we're really trying to serve by this emergency power.

You see, I asked Mr. Volker yesterday of the 120 institutions that failed last year how many would have been affected by this legislation?

If I recall correctly, he said none. So I wonder who this is really for. I guess I'm relating it to the fact that we can't get a reasonable response to a letter to your agency that we sent to you regarding the problems of inaccessibility that consumers have with some institutions.

Mr. CLARKE. We are trying to help the FDIC, the banking system in general and the public that those banks serve—and not necessarily in that order. I think consumer services and fees that banks charge, which are very important, are really separate issues and not related to what we're trying to do here. What we're trying to do here is keep bank supervisors from having to deal with bank failures only by letting them fail. We're trying——

Ms. OAKAR. I'm aware of what the legislation says. I know what it says. But I think it's interrelated. You want more power is what it's all about. Right?

You want more regulatory authority, don't you?

Mr. CLARKE. I would refer to as more regulatory options to deal with problems when they come up. I don't see that it really gives us any more power.

Ms. OAKAR. Well, if it doesn't, then I guess maybe we shouldn't support the bill. I think it does. You're asking for more authority when it comes to an emergency situation, aren't you?

Mr. CLARKE. We are asking for more options to deal with emergency situations, yes.

Ms. OAKAR. Well, get involved in semantics if you want, but, I think your kind of response is sort of tantamount to the cavalier attitude of not responding to our letter.

My time's expired. Thank you, Mr. Chairman.

Chairman **St Germain**. Mr. Barnard.

Mr. **Barnard**. Mr. Sexton, are you a member of the CSBS?

Mr. **Sexton**. Yes, sir.

Mr. **Barnard**. Do I understand that you're the incoming president of that organization?

Mr. **Sexton**. I'm the president-elect.

Mr. **Barnard**. President-elect.

We respect CSBS very much. I mean, throughout the tenure that I've been in Congress, their testimony has been well respected and well thought out.

But I must say that it comes at a time when it gives us great concern because their testimony to this committee several days ago, at least as far as this member's interpretation, was really that we don't need this bill.

You know, that this is not really an emergency bill at all. So, therefore, I asked them if they would be influenced by your testimony today, and they said they certainly would.

So I'd like to ask you: Do we need this bill?

Mr. **Sexton**. Well, all the subsequent events are going to tell us whether the FDIC needs expanded authority. I think there are some reasonably good concepts in here, such as the failing bank.

I don't believe that the CSBS feels that the case has been made for passing an entire holding company in an immediate and pervasive presence across the State to solve one problem.

I don't believe that case has been made, to my knowledge or the knowledge of CSBS. I think that was the primary thrust of their contention, was that we don't want to do anything that's going to interfere with the timely and orderly resolution of the system's problems.

But we don't want to get caught into a situation where everything gets over-cured.

And, so, therefore, we would like to be convinced that——

Mr. **Barnard**. Well, I compared this legislation yesterday to the containment dome that we're very much concerned about in all of our nuclear reactors today. So, consequently, does the case have to be made for any particular situation?

I mean, isn't it enough to say that we've got problems with banks, that we've got problems with holding companies? And just like it's been said, we possibly will never use this bill, as a good case.

But should we just ignore it? That's the point.

Mr. **Sexton**. No, I don't think so. But, of course, if we wanted to be sure that everything, all contingencies will be handled, there are a lot of other sacrifices that could be made—geographically as well as in product lines.

We could simply open up the banks to the nonbanking institutions, for instance. So I think that there's always that tradeoff, Mr. Barnard, that, yes, we want to handle the problems but that there are some environmental concerns, banking environmental concerns with overcuring the problem and giving too much power to the regulator who handles it.

Mr. **Barnard**. Well, then, would you suggest then that instead of passing this bill now, we just sort of let it lay around? And then, if we have a problem, then we will put it into play?

How about that scenario?

Mr. SEXTON. Well, that would be exciting.

Mr. BARNARD. It would be exciting. [Laughter.]

Why do you say it would be exciting? Is that because of some of the situations in Texas?

Mr. SEXTON. Well, any time——

Mr. BARNARD. You're a bold fellow, but I didn't know that you wanted to be that bold that you were ready to solve those problems in Texas. I thought that was why we were here.

Mr. SEXTON. Well, presumably, there are other problems around the country. I will acknowledge one or two in Texas. But there are problems elsewhere.

Of course, we need the ability to handle the problems wherever they come up. The failing bank definition gives me utterly no problem at all.

What does give me a problem is the tradeoff, as I mentioned in my testimony, between what is necessity and what is lubricant?

The FDIC can handle an individual, isolated failed bank or failing bank; that is within their power to do. It's all a matter of money.

Mr. BARNARD. Could they have handled Continental?

Mr. SEXTON. They handled Continental——

Mr. BARNARD. No, no, no. They bailed out Continental.

Could they have handled Continental?

When they admitted, when they came forth—and I think you were a part of the FDIC at that time—when they came forth and guaranteed all deposits—all deposits—could the FDIC coffers have handled that?

Mr. SEXTON. I'm sorry, could the FDIC what?

Mr. BARNARD. The reserves, coffers, or whatever you want to call it.

Chairman ST GERMAIN. Excuse me. I must say that I remember very clearly questioning—I think it was Mr. Isaacs. And he made it clear that the FDIC did not guarantee all deposits. They used a little semantics to make it sound as though they did it.

But they were able to demonstrate to us that the wording was such that they said nobody would lose any money, but they didn't say the FDIC was guaranteeing the deposits.

Mr. BARNARD. Well, Mr. Chairman, I would seriously say that, after the fact, those semantics might have been clarified. But, before the fact, I think it was not much of a question that everybody was going to be——

Chairman ST GERMAIN. They had the press buffaloed.

Mr. BARNARD. Yes. Well, they had the Japanese banks buffaloed, too, because they kept the money in there.

Anyway, let's get back to the point. I mean, I think this is a very serious consideration, that we've got, I think we've got to be convinced. And of course, when reputable witnesses like the independent bankers come before us and the CSBS come before us, I just think we've got to be sure that the industry itself realizes that we've got this situation.

And I'm worried, I'm really worried. Dr. Seidman, you know he's right relaxed at this particular time. Is he going to be relaxed in the next 90 days or 6 months, or 1 year?

And so I get back again to the fact that I wish somebody would say to us:

We need this protection from CSBS. I mean, let's hope we never do use it. But it is that containment dome that we're so concerned about, that the fallout could be so great that it could—not only would we have trouble with the FSLIC, but we're going to have trouble with the FDIC?

Mr. SEXTON. Mr. Barnard, I believe that we do, as a matter of prudence, need the protection. I'm not so sure it's the protection afforded in this bill. I'm not so sure it's not a bridge bank type of concept.

I think that needs to be explored, where we get the time that we need to look and see what the real situation is at the bank before we cure it.

Mr. BARNARD. Do you discount all of the provisions in there to permit you, your role in all of this? I mean, don't you think there's been sufficient protections put in there to protect the States in these decisionmaking?

Mr. SEXTON. Sir, the protection, as I recall it, there is a veto on my part that can be overridden by a unanimous vote of the FDIC.

Mr. BARNARD. That is only when the FDIC is going to offer money to protect it.

Mr. SEXTON. Right.

Mr. BARNARD. If there is no money from the FDIC coming in there, you have the absolute control to veto it.

Mr. SEXTON. Yes, sir, and I am not so sure that I want that. I would rather the market work for us.

Mr. BARNARD. The market?

Mr. SEXTON. Yes, sir.

Mr. BARNARD. But then what you are doing, you are subjecting the reserves of the FDIC, and the question is: Are there sufficient reserves there?

Mr. SEXTON. I don't know the answer to that question, whether there are sufficient reserves. I presume there are.

Mr. BARNARD. That is why we need to pass this bill because you don't know and nobody else knows, but we need that satisfaction that we have got some other thing to do in order to save it.

My time has expired.

Chairman ST GERMAIN. Mr. Bartlett.

Mr. BARTLETT. Thank you, Mr. Chairman.

I appreciate all the witnesses, with their excellent and well-developed testimony today.

Let me go back to one of the broader issues, really for each of the witnesses that would care to answer. That is:

Do you believe that it would be helpful in terms of public confidence for this committee and this Congress to pass either this legislation or something like this legislation in a rather restricted form, in what I could call a clean bill, so that we could adopt this kind of legislation once we determined the parameters in a rather expedited manner, perhaps sometime in the next 30 days, or would your judgment be that it would be suitable to delay it and to attempt to put it as much more part of an omnibus bill?

By "this legislation," I am discussing the emergency acquisition on an interstate basis, the expansion of Garn-St Germain, with perhaps the inclusion of the recapitalization of FSLIC if that can generally be agreed upon in the same timeframe.

My question is: Do you think that we ought to act promptly in terms of public confidence or delay it?

Mr. Clarke.

Mr. CLARKE. I don't want to be in the position of giving you advice on legislative strategy, but I would underscore the importance of having action taken as promptly as possible.

Mr. BARTLETT. Mr. Sexton?

Mr. SEXTON. Well, the point has been made that if the nonbank bank loophole doesn't get sealed, who is really interested in doing the interstate transactions on a failed bank?

I think some sort of legislation for handling larger failures is extremely important, but I don't know how we resolve that in our minds as to leaving the nonbank loophole open and at the same time trying to motivate banks to acquire failed banks.

Mr. BARTLETT. Mr. Seidman?

Mr. SEIDMAN. It seems to me that this legislation will help with the confidence in the banking system. No one knows when it might need to be used, but it could be sooner rather than later, and I think it ought to be expedited on its own.

Mr. BARTLETT. Mr. Gray.

Mr. GRAY. What I tried to say in my testimony a little earlier is that FSLIC recapitalization, from my point of view, is an absolute necessity. We should move on to deal with that problem absolutely as quickly as we can. We needed recapitalization last year, and if we needed it last year, we need it that much more this year.

However the committee decides to go is obviously best left to the wisdom of the committee. As far as I am concerned, for the Nation's financial system as a whole, the recapitalization proposal that we are making to you is of absolute necessity.

Mr. BARTLETT. Mr. Gould?

Mr. GOULD. I agree very much with Chairman Gray's statement, Mr. Bartlett. I think the FSLIC recapitalization is something to deal with a problem that is here now and indeed has been here for a while, and I think it is quite essential for the industry and for general confidence in the system to cope with that this year.

Mr. BARTLETT. Mr. Gray and Mr. Gould, I have a question as to what—not so much as to what is in your proposal, which I find to be quite supportable in terms of recapitalization, but as to what, it seems to me anyway, could be omitted.

And that is—and perhaps you can enlighten me if there are some things in other legislation, regulations, or in this legislation that would change some of the basic things that perhaps got us to the problem we are now—that is reinstatement of some sort of a transition toward GAAP accounting or capital-based premiums or higher capitalization ratios.

I know you mentioned that you had proposed those, but am I mistaken, or are they in this legislation and I just don't see it, or do you think those kinds of things should be in the legislation?

Mr. GOULD. Could I just give some background information as I have answered the same question earlier?

We have tried to keep the FSLIC recapitalization plan rather pure in the hopes that that would expedite it, without by that means saying there aren't other things that ought to be done.

But let me try to characterize the problem for you in two ways which I think at least I have found helpful.

The problem of the S&L's is a current problem which results from past actions, and it is also a prospective problem of seeing that whatever caused the problem in the past is obviated for the future.

The recapitalization, in our mind, speaks to the past. Speaking to the future, in our view, is very much a matter of the Home Loan Bank Board taking those steps—and Chairman Gray has been talking about these for some time—to prevent a recurrence, at least in the same ways, of the problem.

Mr. BARTLETT. The purpose of my asking the question is to see if there is a way to tie the two solutions together and instead of just talking about the solutions, to actually place them in the same legislation. It is the same problem.

Mr. GRAY. Congressman, of course we have a good deal of regulatory authority now, and we have already proposed seven different regulations, one of which would in fact move us closer to GAAP accounting, another one that would move the capital of the industry upwards over time, specifically in 6 years would raise the capital to 6 percent of reserves to liabilities.

We have also incorporated in that regulation, which is now out for comment, a risk-based capital approach to dealing with the excessive risk-taking that we have been subjected to in the past.

And we are not finished yet. There will be additional regulations which are now under development that will be proposed. They are tough proposals. They do not meet often with glad acclaim, but all of them are intended to improve safety and soundness and prudent operations in our insured institutions.

Mr. BARTLETT. Do you have full authority to take regulatory action without additional legislative jurisdiction?

Mr. GRAY. Yes, we do.

Mr. BARTLETT. My time has expired. Thank you.

Chairman ST GERMAIN. Mr. Wylie.

Mr. WYLIE. Thank you, Mr. Chairman. I just have two questions. I know we are in a vote situation and you want to conclude.

But a little earlier the chairman made a statement with reference to the Community Reinvestment Act and consumer safeguards, and I guess I should ask this of Mr. Clarke and/or Mr. Seidman.

If bank A acquires bank F, a failing bank, don't the present laws apply with reference to the Community Reinvestment Act and the consumer safeguards?

Mr. CLARKE. Do the provisions of present law apply?

Mr. WYLIE. Yes.

Mr. CLARKE. Yes, sir, they do.

Mr. WYLIE. And they would apply even, I would assume, if we passed this failing bank legislation, although I suppose you could say that if we passed this bank legislation and that wasn't included in there as a part of the law, then that was an attempt to exclude it.

Mr. **Clarke**. It is my understanding, Mr. Wylie, that the same process would be in place at the Federal Reserve Board as for any other holding company acquisition and that to the extent that consumer issues can be raised in connection with any acquisition, they could be raised in connection with an emergency acquisition, as well.

Mr. **Wylie**. That would be my inclination. We might want to clarify this for the record.

But I just wanted to get to Mr. Sexton on one other question.

You indicated that you don't particularly like the bill before us and the Independent Bankers and the Conference of State Bank Supervisors don't like it, and you talked about giving the FDIC conservatorship authority or authority to operate a bridge bank, right?

Mr. **Sexton**. Yes, sir.

Mr. **Wylie**. What is the difference between a conservatorship and a bridge bank?

I haven't been able to sort that out.

Mr. **Sexton**. Well, I didn't really have a conservatorship in my statement. I don't really know what a conservatorship would be in that context.

But the bridge bank is simply one that the FDIC would operate until all the problems bubbled to the top. Then you could see what you have to sell, and you would have time to shop the institution, remembering that the greatest problem in handling a bank that is large and that is failing is time.

Mr. **Wylie**. But the bridge bank wouldn't be an acquirer bank? How would it get into the business—I don't know—of operating the bank?

Mr. **Sexton**. The bridge bank would be chartered to take over the failed bank, and it would be operated until such time as the problem could be more fully identified, and until the people had time to come in and shop——

Mr. **Wylie**. Can you help me, Mr. Seidman? What is the difference between a conservatorship and a bridge bank?

Mr. **Seidman**. The basic difference I believe is that a conservatorship is equivalent to a chapter 11 proceedings in a normal bankruptcy. It is a trustee type situation where the FDIC would act as the trustee of the assets of a failed bank.

A bridge bank is a newly incorporated bank under a charter with defined powers, probably with a defined life, and that would operate therefore under its own charter.

Mr. **Wylie**. Yes.

Are they realistic alternatives to this emergency acquisition provision legislation?

Mr. **Seidman**. I believe that they are not alternatives. I believe that they are additional tools that we ought to have. We are preparing legislation in this regard, and we will be sending it up here.

It is complicated. We are conferring with the banking community to get their views on it, and I think it is an additional tool that we should have.

But this legislation deals with trying to get a private sector solution; that is, keeping the FDIC from operating either a conservatorship or a bank.

We believe that is the preferred solution if possible. If not possible, as in Continental Illinois, then we are trying to set up again a vehicle that can handle the Continental Illinois situation in a more efficient manner than they were able to do with what they had at that time.

Mr. **Wylie**. Thank you.

Thank you, Mr. Chairman.

Chairman **St Germain**. Gentlemen, I did send down to you a question related—this is to Mr. Seidman and Mr. Clarke. Mr. Sexton has made a number of recommendations for changes in H.R. 4701, and I ask that you provide us with your reaction to each of them.

Now, in the case of No. 2, the $250 million size limit should be eliminated, I believe, Mr. Sexton, that you have told staff that that should read "for failed banks" and not "for failing banks," is that correct?

Mr. **Sexton**. That is correct, sir. I think the issues are very different between failed and failing.

Under failed, you are just looking for a way to handle a deal. Under failing, you are looking for a more orderly way to transfer ownership of institutions.

So I think it is more important that the size criteria be eliminated for failed banks.

Chairman **St Germain**. Right.

And so I would say to you gentlemen, if you would be good enough to address yourselves to the four questions propounded under No. 3 that I sent down to you. I would like that for the record so that you can have the benefit of staff assistance as well to address these questions.

Gentlemen, we thank you.

Mr. **Wortley**. Mr. Chairman?

Chairman **St Germain**. Well, is it real quick, because we have to vote?

Mr. **Wortley**. Mr. Chairman, may I just get a quick up-and-down answer from Mr. Gould and the three regulators?

Should bank regulators whose agencies are self-financed through assessments and premiums and not taxpayer funded, be exempt from the Budget Act and Gramm-Rudman?

Yes or no, Mr. Gould.

Mr. **Gould**. Yes or no, I cannot do. I would say that, as I have testified before this chairman before, we would be happy to cooperate with the Congress if the Congress felt in its wisdom that Gramm-Rudman was not intended to apply to the bank regulators.

Mr. **Wortley**. Mr. Gray, yes or no?

Chairman **St Germain**. Mr. Gray doesn't have that problem any longer.

Mr. **Wortley**. Yes, that is right. Well, he is part of the Budget Act.

Mr. **Gray**. We have the Gramm-Rudman problem, yes.

Chairman **St Germain**. You do?

Mr. **Gray**. I would like to see relief from that.

Mr. **Wortley**. OK, Mr. Seidman.

Mr. **Seidman**. Yes.

Mr. **Wortley**. Yes, OK.

Mr. Clarke?

Mr. **Clarke**. Yes.

Mr. **Wortley**. Thank you very much, gentlemen.

Chairman **St Germain**. Thank you, gentlemen.

The subcommittee stands adjourned to the call of the Chair.

[Whereupon, at 12:30 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

[Letters of invitation to witnesses, prepared statements of this day's hearing and material received by the subcommittee for inclusion in the record follow:]

APPENDIX

FERNAND J ST GERMAIN RHODE ISLAND CHAIRMAN

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TOBY ROTH WISCONSIN

May 1, 1986

Honorable George D. Gould
Under Secretary for Finance
Department of the Treasury
15th Street and Pennsylvania Ave., N.W.
Washington, D.C. 20220

Dear Mr. Gould:

To assist this Subcommittee in the discharge of its responsibilities, you are requested to appear on Thursday, May 8, 1986, in Room 2128 Rayburn House Office Building at 10:00 a.m., to provide testimony to the Subcommittee on the Administration's proposal for recapitalizing the Federal Savings and Loan Insurance Corporation, and the Administration's position on proposed enhancements of the Federal Home Loan Bank Board supervisory powers and on H.R. 4701, the Financial Institutions Emergency Acquisitions Amendments of 1986, legislation proposed by the Federal bank regulatory agencies.

In accordance with Committee Rules, please deliver 175 copies of your prepared statement to Room B303 Rayburn House Office Building twenty-four hours in advance of your scheduled appearance. Your statement in its entirety will be included in the hearing record and, if delivered as requested, the statement will be made available to all Subcommittee Members in advance of the hearing. To provide all Subcommittee Members with sufficient time for questioning, the oral presentation of your prepared statement must be limited to ten minutes.

Sincerely,

F J St Germain
Fernand J. St Germain
Chairman

FJStG:dTv

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TOBY ROTH WISCONSIN

May 1, 1986

Honorable L. William Seidman, Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Dear Mr. Seidman:

To assist this Subcommittee in the discharge of its responsibilities, you are requested to appear on Thursday, May 8, 1986, in Room 2128 Rayburn House Office Building at 10:00 a.m., to provide testimony to the Subcommittee on H.R. 4701, the Financial Institutions Emergency Acquisitions Amendments of 1986, legislation proposed by the Federal regulatory agencies, and on related issues. More specifically, you are asked to testify on the following matters of concern to the Subcommittee:

1. H.R. 4701, the Financial Institutions Emergency Acquisitions Amendments of 1986, would allow assisted and unassisted extraordinary acquisitions of insured banks (and their parent holding companies and affiliates) if the bank is "in danger of closing."

Please provide the Subcommittee with estimates on the number of institutions presently qualifying under the legislation's definition of "in danger of closing," the location on a state-by-state basis of these institutions, and the asset size levels of these institutions.

2. Is it possible for a nonfinancial institution to avail itself of any of the provisions of H.R. 4701 in order to acquire an insured bank?

3. Section 2 of H.R. 4701 confirms the FDIC's powers under section 13(c) of the Federal Deposit Insurance Act to assist a transaction. The Subcommittee is interested in the FDIC's use of section 13(c) in the past, the current level of outstanding assistance under 13(c) by the FDIC, and FDIC's estimates on the future use of section 13(c) both generally, and in connection with certain extraordinary acquisitions under section 13(f) as amended by the legislation. Accordingly, please answer the following:

a. From 1982 to the present, provide an annual compilation of the FDIC's assistance under section 13(c), with a breakdown of the total number of institutions assisted each year, including assistance to those persons acquiring control of insured banks under 13(f) as it is currently written, together with the name and location of each assisted institution or acquiring person, and an indication as to whether the action was taken to prevent the closing of an insured bank, to restore an insured closed bank to normal operation, or if such assistance was accorded to lessen the risk to the FDIC posed by the threat of instability due to severe financial conditions. Please include the amount of 13(c) assistance given in each transaction, broken down by the amount of loans to, deposits in, purchases of the assets of, or securities of, assumption of the liabilities of, or contributions made to insured banks or persons under section 13(c).

b. Please state the level of FDIC assistance under section 13(c) currently outstanding, including an identical breakdown as specified above.

c. Please estimate the level of assistance anticipated under section 13(c) for the remainder of 1986, and for 1987, including separate estimates on the anticipated levels of assistance for transactions under the provisions in H.R. 4701 to amend section 13(f).

4. H.R. 4701 would preserve the eligibility of insured banks (or their parent holding company or affiliated banks) to be acquired by an out-of-state bank or bank holding company, even after FDIC assistance has been granted under section 13(c) of the Federal Deposit Insurance Act, provided such assistance was initially granted after April 15, 1986 and remains outstanding.

Should out-of-state banks and bank holding companies continue to be allowed to acquire institutions receiving FDIC assistance, even after those institutions may no longer be in danger of closing or when the severe financial conditions which precipitated the assistance have subsided?

In accordance with Committee Rules, please deliver 175 copies of your prepared statement to Room B303 Rayburn House Office Building twenty-four hours in advance of your scheduled appearance. Your statement in its entirety will be included in the hearing record and, if delivered as requested, the statement will be made available to all Subcommittee Members in advance of the hearing. To provide all Subcommittee Members with sufficient time for questioning, the oral presentation of your prepared statement must be limited to ten minutes.

Sincerely,

Fernand J. St Germain
Chairman

FJStG:dTv

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TOBY ROTH WISCONSIN

May 1, 1986

Honorable Robert L. Clarke
Comptroller of the Currency
490 L'Enfant Plaza East, S.W.
Washington, D.C. 20219

Dear Mr. Clarke:

To assist this Subcommittee in the discharge of its responsibilities, you are requested to appear on Thursday, May 8, 1986, in Room 2128 Rayburn House Office Building at 10:00 a.m., to provide testimony to the Subcommittee on H.R. 4701, the Financial Institutions Emergency Acquisitions Amendments of 1986, the legislation proposed by the Federal regulatory agencies, and on related issues. More specifically, you are asked to testify on the following matters of concern to the Subcommittee:

1. H.R. 4701, the Financial Institutions Emergency Acquistions Amendments of 1986, would allow assisted and unassisted extraordinary acquisitions of insured banks (and their parent holding companies and affiliates) if the bank is "in danger of closing."

Please provide the Subcommittee with estimates on the number of institutions presently qualifying under the legislation's definition of "in danger of closing," the location on a state-by-state basis of these institutions, and the asset size levels of these institutions.

2. Is it possible for a nonfinancial institution to avail itself of any of the provisions of H.R. 4701 in order to acquire an insured bank?

3. Section 11 of the Bank Holding Company Act requires that antitrust actions arising out of a merger or acquisition under section 3 must be started "prior to the earliest time" a section 3 approval may be consummated. In eliminating the post-approval waiting period before which a section 3 transaction may be consummated, H.R. 4701 could affect the timely filing of antitrust actions challenging these transactions.

Please comment on the antitrust implications of eliminating the post-approval waiting period in section 11. Please state whether the Department of Justice's Antitrust Division has been notified of this change, and their reaction to such a change to Section 11, and, indeed, to the legislation as a whole.

4. H.R. 4701 would preserve the eligibility of insured banks (or their parent holding company or affiliated banks) to be acquired by an out-of-state bank or bank holding company, even after FDIC assistance has been granted under section 13(c) of the Federal Deposit Insurance Act, provided such assistance was initially granted after April 15, 1986 and remains outstanding.

Should out-of-state banks and bank holding companies continue to be allowed to acquire institutions receiving FDIC assistance, even after those institutions may no longer be in danger of closing or when the severe financial conditions which precipitated the assistance have subsided?

In accordance with Committee Rules, please deliver 175 copies of your prepared statement to Room B303 Rayburn House Office Building twenty-four hours in advance of your scheduled appearance. Your statement in its entirety will be included in the hearing record and, if delivered as requested, the statement will be made available to all Subcommittee Members in advance of the hearing. To provide all Subcommittee Members with sufficient time for questioning, the oral presentation of your prepared statement must be limited to ten minutes.

Sincerely,

Fernand J. St Germain
Chairman

FJStG:dTv

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TOBY ROTH, WISCONSIN

May 1, 1986

Honorable Edwin J. Gray, Chairman
Federal Home Loan Bank Board
1700 G Street, N.W.
Washington, D.C. 20552

Dear Chairman Gray:

To assist this Subcommittee in the discharge of its responsibilities, you are requested to appear on Thursday, May 8, 1986, in Room 2128 Rayburn House Office Building at 10:00 a.m., to provide testimony to the Subcommittee on the Administration's proposal for recapitalizing the Federal Savings and Loan Insurance Corporation, and on your proposed enhancements of Federal Home Loan Bank Board supervisory powers.

In accordance with Committee Rules, please deliver 175 copies of your prepared statement to Room B303 Rayburn House Office Building twenty-four hours in advance of your scheduled appearance. Your statement in its entirety will be included in the hearing record and, if delivered as requested, the statement will be made available to all Subcommittee Members in advance of the hearing. To provide all Subcommittee Members with sufficient time for questioning, the oral presentation of your prepared statement must be limited to ten minutes.

Sincerely,

Fernand J. St Germain
Chairman

FJStG:dTv

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April 30, 1986

Hon. James L. Sexton
Commissioner
Texas State Department of Banking
Conference of State Bank Supervisors
1015 Eighteenth Street, N.W.
Washington, D.C. 20036

Dear Commissioner Sexton:

To assist this Subcommittee in the discharge of its responsibilities, you are requested to appear on Thursday, May 8, 1986, in Room 2128 Rayburn House Office Building at 10:00 a.m., to provide testimony to the Subcommittee on proposed legislation by the Federal regulatory agencies on emergency interstate acquisitions and related matters. More specifically, you are asked to testify on H.R. 4701, the Financial Institutions Emergency Acquisitions Amendments of 1986, the legislation proposed by the Federal regulatory agencies. A copy of the bill is enclosed.

In accordance with Committee Rules, please deliver 175 copies of your prepared statement to Room B303 Rayburn House Office Building twenty-four hours in advance of your scheduled appearance. Your statement in its entirety will be included in the hearing record and, if delivered as requested, the statement will be made available to all Subcommittee Members in advance of the hearing. To provide all Subcommittee Members with sufficient time for questioning, the oral presentation of your prepared statement must be limited to ten minutes.

Sincerely,

Fernand J. St Germain
Chairman

FJStG:dTv

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, DC 20429

OFFICE OF THE CHAIRMAN

May 6, 1986

Honorable Fernand J. St Germain
Chairman
Subcommittee on Financial Institutions
Supervision, Regulation and Insurance
Committee on Banking, Finance
and Urban Affairs
U.S. House of Representatives
Washington, D.C. 20515-6051

Dear Chairman St Germain:

The following is provided in response to your questions regarding H.R. 4701 provided in your letter of May 1, 1986:

> 1. H.R. 4701, the Financial Institutions Emergency Acquisitions Amendments of 1986, would allow assisted and unassisted extraordinary acquisitions of insured banks (and their parent holding companies and affiliates) if the bank is "in danger of closing."
>
> Please provide the Subcommittee with estimates on the number of institutions presently qualifying under the legislation's definition of "in danger of closing," the location on a state-by-state basis of these institutions, and the asset size levels of these institutions.

The chartering authority would have to make the determination of which banks are "in danger of closing" under the proposed legislation. Presently, there are about 1,000 banks with assets greater than $250 million of which 78 are on our problem list. Recent experience indicates about 10 percent of the banks on the problem list fail or need FDIC assistance. We are reluctant to provide detailed information regarding the size or location of problem banks but there is an increasing number of larger institutions on the problem list.

> 2. Is it possible for a nonfinancial institution to avail itself of any of the provisions of H.R. 4701 in order to acquire an insured bank?

It is possible for a nonfinancial institution to acquire an insured bank under existing law and it would remain possible under H.R. 4701. This bill neither authorizes nor prohibits such a transaction.

> 3. Section 2 of H.R. 4701 confirms the FDIC's powers under section 13(c) of the Federal Deposit Insurance Act to assist a transaction. The Subcommittee is interested in the FDIC's use of section 13(c) in the past, the current level of outstanding assistance under 13(c) by the FDIC, and

FDIC's estimates on the future use of section 13(c) both generally, and in connection with certain extraordinary acquisitions under section 13(f) as amended by the legislation. Accordingly, please answer the following:

a. From 1982 to the present, provide an annual compilation of the FDIC's assistance under section 13(c), with a breakdown of the total number of institutions assisted each year, including assistance to those persons acquiring control of insured banks under 13(f) as it is currently written, together with the name and location of each assisted institution or acquiring person, and an indication as to whether the action was taken to prevent the closing of an insured bank, to restore an insured closed bank to normal operation, or if such assistance was accorded to lessen the risk to the FDIC posed by the threat of instability due to severe financial conditions. Please include the amount of 13(c) assistance given in each transaction, broken down by the amount of loans to, deposits in, purchases of the assets of, or securities of, assumption of the liabilities of, or contributions made to insured banks or persons under section 13(c).

b. Please state the level of FDIC assistance under section 13(c) currently outstanding, including an identical breakdown as specified above.

We have provided the information requested in tabular form on subsequent pages. In the interest of providing a timely response and in providing useful information we have excluded detail on assistance provided to facilitate within-state purchase and assumption transactions for banks that failed and were closed by their chartering authority. Such P&A transactions represent by far the most common form of assistance and will continue to be the most common form with or without new legislation. In 1982 there were 25 such transactions, 36 in 1983, 62 in 1984, 87 in 1985 and 29 through April 30, 1986. Information on these transactions can be provided at a later date if it is so desired.

c. Please estimate the level of assistance anticipated under section 13(c) for the remainder of 1986, and for 1987, including separate estimates on the anticipated levels of assistance for transactions under the provisions in H.R. 4701 to amend section 13(f).

The circumstances surrounding problem banks and failing banks are constantly changing, often in unforeseen ways. It is not possible to anticipate the level or type of assistance with any degree of assurance beyond a very short time. However, we have had roughly 40 failures to date in 1986 and 120 in 1985. We do not foresee any improvement in those rates in 1986 and, therefore, expect approximately 80 or more additional failures by year-end. Presently there is little reason to expect significant improvement in 1987 but estimates that far in the future have little meaning.

During 1985, the FDIC disbursed $2.3 billion in connection with bank failures and assistance transactions, about one quarter of these cases were depositor payoffs with the rest being purchase and assumption or assistance transactions. We note however, the ultimate cost to the insurance fund will be considerably less than the amount disbursed.

We have used the interstate provisions of section 13(f) three times. Only once has it resulted in an acquisition by an out-of-state bank. However, the existence of out-of-state bidders is believed to have been an important influence in obtaining a satisfactory bid from within-state institutions in the other two instances. We have not formally used the interstate provisions in handling any of the larger savings banks but in several cases we did informally make out-of-state inquiries to see if there was any interest. The interstate provisions are not expected to be needed frequently but may well be critical in handling selected institutions of modest to large size in a manner that provides the least disruption to the banking system and minimizes the impact to the FDIC fund.

> 4. H.R. 4701 would preserve the eligibility of insured banks (or their parent holding company or affiliated banks) to be acquired by an out-of-state bank or bank holding company, even after FDIC assistance has been granted under section 13(c) of the Federal Deposit Insurance Act, provided such assistance was initially granted after April 15, 1986, and remains outstanding.
>
> Should out-of-state banks and bank holding companies continue to be allowed to acquire institutions receiving FDIC assistance, even after those institutions may no longer be in danger of closing or when the severe financial conditions which precipitated the assistance have subsided?

Our proposal envisions situations where the institution would fail but for FDIC assistance. Therefore, even though assistance has prevented failure the bank is not financially independent. The FDIC as a matter of policy does not desire to routinely maintain long-term financial involvement in insured banks. Having given assistance, which may involve continuing exposure to the FDIC fund, we would like to be able to seek a private market solution if the opportunity exists. Given the size of the banks involved, the normal inability of banks in the same area to diversify through acquisition of another area bank, and the potential that other major within state banks would be financially strained due to common economic problems, a private market solution is likely to require involvement of an out-of-state bank. Broadening the possible alternatives should also allow the FDIC to reduce the potential impact on the insurance fund. Therefore, so long as the FDIC is at risk in a given institution, that institution should be available for acquisition by out-of-state banks.

Sincerely,

L. Wm Seidman

L. William Seidman
Chairman

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Name of Institution 1982	Amount	Description	Current Bal.	Reason	Acquiring Institution
Farmers and Merchants Savings Bank Minneapolis, Minnesota	$30 million	Cash Contribution	-0-	Facilitate Merger	Marquette National Bank of Minneapolis Minneapolis, Minnesota
	$50 million	Income Maintenance Payments	$20.2 million		
	$32 million	Purchase Assets of	-0-		
Fidelity Mutual Savings Bank Spokane, Washington	$15.7 million	Income Maintenance Payments	$40 million	Facilitate Merger	First Interstate Bank of Washington, N.A. Seattle, Washington
	$24.3 million	Loan to	-0-		
	$21.5 million	Purchase Assets of	-0-		
	$30.0 million	Deposit in	-0-		
Abilene National Bank Abilene, Texas	$50 million	Deposit in	$50 million	Facilitiate Purchase	Mercantile Texas Corporation Dallas, Texas
Oklahoma National Bank Oklahoma City, Oklahoma	$28.8 million	Purchase Assets of	$23 million	Facilitate Merger	First National Bank and Trust Company of Oklahoma City Oklahoma City, Oklahoma
Western Savings Bank Buffalo, New York	$30 million	Cash Contribution	-0-	Facilitate Merger	Buffalo Savings Bank Buffalo, New York
New York Bank for Savings New York, New York	$ 20 million	Cash Contribution	-0-	Facilitate Merger	Buffalo Savings Bank Buffalo, New York
	$35 million	Cash Contribution	-0-		
	$80 million	Loan to	-0-		
	$204 million	Income Maintenance Payments	$308.5 million		

Name of Institution	Amount	Description	Current Bal.	Reason	Acquiring Institution
Auburn Savings Bank Auburn, New York	$2.9 million	Loan to	$2.9 million	Facilitate Merger	Syracuse Savings Bank Syracuse, New York
First National Bank of Midland Midland, Texas	$100 million	Interim Loan to	-0-	Stabilize situation	Later Acquired by Republic Bancorporation Dallas, Texas, in a closed bank purchase and assumption transaction
1984					
Orange Savings Bank Livingston, New Jersey	$26 million	Cash Contribution	-0-	Facilitate Merger	Hudson City Savings Bank Paramus, New Jersey
Continental Illinois National Bank and Trust Company Chicago, Illinois	$1.5 billion $3.5 billion $1.0 billion	Interim Loan to Assumption of Liab Purchase of Prefer. Stock	-0- $3.0 billion $1.0 billion	Stabilize situation Prevent Closing	None.
1985					
The Commercial Bank Andalusia, Alabama	$0.1 million	Assumption of Liabilities	$0.1 million	Facilitate Merger	First Alabama Bancshares, Inc. Montgomery, Alabama
Bowery Savings Bank New York, New York	$165 million $183 million $100 million $115 million	Cash Contribution Income Maintenance Payments Loan to Purchase Assets of	-0- $183 million $100 million $110 million	Facilitate Acquisition	Bowery Savings Bank New York, New York

Name of Institution	Amount	Description	Current Bal.	Reason	Acquiring Institution
Western Savings Fund Society of Philadephia Haverford, Pennsylvania	$112 million $100 million $216 million $ 2 million	Loan To Income Maintenance Loan To Loss Indemification	-0- $112 million $216 million -0-	Facilitate Merger	PSFS Philadelphia, Pennsylvania
United Mutual Savings Bank New York, New York	$30 million	Loan To	-0-	Facilitate Merger	American Savings Bank New York, New York
Mechanics Savings Bank Elmira, New York	$2.5 million	Loan To	$1.5 million	Facilitate Merger	Syracuse Savings Bank Syracuse, New York
United States Savings Bank Newark, New Jersey	$29.8 million $11.4 million $28 million	Assume Liablitity Cash Contribution Cash Contribution	-0- -0- -0-	Facilitate Merger	Hudson City Savings Bank Paramus, New Jersey
1983					
Dry Dock Savings Bank New York, New York	$32 million $25 million	Income Maintenance Net Worth Cert.	-0-	Facilitate Merger	Dollar Dry Dock Savings Bank New York, New York
Oregon Mutual Savings Bank Portland, Oregon	$11.9 million	Cash Contribution	-0-	Facilitate Merger	Moore Financial Group Boise, Idaho

Name of Institution	Amount	Description	Current Bal.	Reason	Acquiring Institution
Home Savings Bank	$8.5 million	Cash Contribution	-0-	Facilitate Merger	Home Hamburg Savings Bank
White Plains, New York	($2.4 million)	Income Maintenance Payments	-0-		New York, New York
	$15 million	Loan to	$15 million		
	$1.2 million	Purchase Assets of	$1.2 million		
Bank of Oregon	$19.9 million	Purchase of Assets	$13 million	Facilitate Merger	Alaska Pacific Bancorporation
Woodburn, Oregon					Anchorage, Alaska
1986					
The Talmage State Bank	$1.7 million	Loan to	$1.7 million	Prevent Closing	
Talmage, Kansas					

In addition there was one purchase and assumption transaction under section 13(f). In 1986, the FDIC purchased $240 million of assets in the Park Bank of Florida, St Petersburg, Florida. There were four bids received for this bank, only one of which was from a Florida institution (a second Florida bank was a subsidiary of a major out-of-state holding company and their bid represented those interests rather than the Florida bank's interests). The winning bid was approximately $38 million higher that the within-state bid. In 1983, First National Bank of Midland, Midland, Texas and United American Bank, Knoxville, Tennessee were offered for bid interstate under section 13(f). In both instances a within-state institution submitted the winning bid.

Figures displayed under the heading Current Bal. in reference to Income Maintenance Payments are the current (as of 12-31-85) estimate of the amounts that the FDIC will be required to disburse given the current level of interest rates. Current estimates can vary significantly from original estimates due to the terms of the assistance agreement and the difference in the level of interest rates.

FOR RELEASE UPON DELIVERY
Expected at 10:00 a.m.
May 8, 1986

TESTIMONY OF THE HONORABLE
GEORGE D. GOULD
UNDER SECRETARY FOR FINANCE
U.S. DEPARTMENT OF THE TREASURY
BEFORE THE
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE
OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES

Mr. Chairman and Members of the Subcommittee:

I appreciate this opportunity to present, in conjunction with Chairman Gray, the Administration-Federal Home Loan Bank Board (FHLBB) proposal to recapitalize FSLIC.

We have developed this plan in alliance with the leadership of the twelve Federal Home Loan Banks (FHLBanks), whose contribution of up to $3 billion of capital is at the core of this effort to strengthen FSLIC. We also have worked closely with the leaders of the thrift industry, to our substantial benefit. In particular, the officials and staffs of the U.S. League of Savings Institutions and the National Council of Savings Institutions have given us thoughtful and constructive counsel. The result, I believe, is a popular proposal that will strengthen FSLIC, free FSLIC to resolve its problem cases more expeditiously, and increase depositor confidence.

Need for This Proposal

This Subcommittee is well informed about the problems of FSLIC and the savings and loan (S&L) industry, so I will not dwell long on the need for this proposal. Nevertheless, a brief statement of need may give you the context within which we developed this plan.

Estimates of the size of the problem confronting FSLIC vary widely: Most range from about $10 to $25 billion. The crux of the problem is that the assistance costs, even under the most conservative estimates, exceed FSLIC's present financial reserves of about $6 billion.

If we do not recapitalize the fund, FSLIC would need to continue deferring the resolution of many problem S&Ls. This deferral would only increase the fund's ultimate costs. With the appropriate financial and organizational resources, the FHLBB and FSLIC could set more ambitious targets and resolve more cases, more quickly.

This is a propitious time to act. The attractive interest rate environment provides the ideal window of opportunity to move ahead vigorously to deal with ailing S&Ls.

Action now on the thrift industry problem should reaffirm depositor confidence in the health and stability of depository institutions and the viability of the deposit insurance funds. Furthermore, prompt handling of the most debilitated S&Ls should help healthy S&Ls by lowering their cost of deposits, which have been bid up by the feeble S&Ls' call for funds at any price.

If we do not strengthen FSLIC now, we may place the S&L industry at considerable risk in the future should interest rates rise significantly.

Objectives Guiding the Recapitalization Proposal

Six major objectives guide our FSLIC recapitalization proposal.

First, the proposal balances the financing burden between the Federal Home Loan Banks (FHLBanks) and the S&Ls. The cost will be borne entirely by them, without any taxpayer funds.

Second, we transfer funds from these sources to FSLIC through a combination of assessments and stock purchases (most of which will be non-redeemable under all circumstances) to avoid a negative budgetary effect. I will explain more about this stock investment later in this statement.

Third, this plan can supply up to $25-30 billion to FSLIC over approximately the next 5 to 6 years, with approximately $15 billion available in the first 3 years. Given FSLIC's organizational constraints, this infusion probably represents the maximum level of resources that FSLIC can efficiently use to resolve problem cases. Because the plan is flexible by design, FSLIC need not draw this full amount if the size of the problem turns out to be at the low end of the estimated range.

Fourth, the funds transfer to FSLIC is not dependent on any U.S. Government or FSLIC guarantees of debt.

Fifth, the proposal seeks to accommodate the FHLBanks' concerns about a substantial increase in their debt costs and the accounting treatment of their capital contribution. It also recognizes that the allocation of contributions among the FHLBanks needs to take into account their proportions of FDIC-insured members.

Sixth, this plan addresses the S&L industry's overwhelming concern -- the continuation of the FSLIC special assessment -- by creating the substantial likelihood that this extra assessment can be phased out over the next five years. (The special assessment is one eighth of one percent of deposits, in addition to the regular assessment of one twelfth of one percent. If the size of the problem is within the range suggested by a major industry task force -- $8 to $15 billion -- there should be no doubt that the special assessment could and would be phased out.) We believe it is important to show the high probability of eliminating this extra premium over time (even if the problem cost turns out to be $25 to $30 billion), because it is a heavy burden on the industry and we would like to decrease the incentive for healthy thrifts to switch from FSLIC to FDIC insurance.

Description of the Proposal

In essence the recapitalization proposal leverages both the current earned surplus of the FHLBanks and future FSLIC assessments to get equity funds into FSLIC more quickly. A separate corporation (the "Financing Corporation") capitalized by the FHLBanks will undertake a specially designed financing over time to channel equity investments into FSLIC. The proposal contains important safeguards to ensure that both the principal and interest on the Financing Corporation's special borrowings will be repaid.

Most of the Financing Corporation's investment in FSLIC, however, will be in the form of non-redeemable capital certificates that will never be repaid. The remainder of the Financing Corporation's investment in FSLIC will be in the form of non-voting capital stock that may or may not be repaid, with or without a return, depending on FSLIC's financial performance (as measured through FSLIC's reserve-to-deposits ratio).

The key elements of the proposal are as follows:

o The FHLBB charters a "Financing Corporation," capitalized with no more than $3 billion of the FHLBanks' surplus over about 5 to 6 years. (The FHLBanks had $1.8 billion in earned surplus at year-end 1985; they earned over $1 billion in 1985 and added about $290 million to their earned surplus.) The Financing Corporation will not have its own paid staff.

- The Financing Corporation borrows approximately $10 billion through long-term bonds (15 to 30-year maturities) over these five to six years. It assures payment of these bonds' principal, without passing any debt obligation to FSLIC, by buying approximately $2 billion of long-term, zero-coupon instruments, which will equal the bond principal upon maturity. The Corporation will be subject to stringent limits on activities, leverage and life. (The FHLBanks estimate that the Corporation's debt will yield 50-75 basis points, a half to three quarters of a percentage point, above Treasuries of comparable maturity.)

- The Financing Corporation then invests the same amount the FHLBanks invested in it (a maximum of $3 billion) in non-voting capital stock of FSLIC and an additional $8 billion (or more) in non-redeemable capital certificates of FSLIC. (The Financing Corporation could borrow approximately an additional $5 billion, if needed, by increasing its purchase of zero-coupon instruments from $2 billion to the full $3 billion of its available capital.)

- FSLIC employs some of its assessment income to pay dividends to the Financing Corporation, which uses this money to pay interest on its bonds. (When the Financing Corporation's debt is extinguished, the dividends from FSLIC end.)

- FSLIC uses the rest of its assessment income to add to its case resolution resources. The combination of equity and assessments enables FSLIC to deploy about $15 billion in case resolution funds in the first 3 years and about $10 billion more over the next 2 years.

- The special assessment can be phased out gradually over 5 years, while still securing this $25 billion for FSLIC.

- The Financing Corporation would repay its debt principal (through the maturing zeros) around 2020. FSLIC would not by repaying this debt, nor would it be contingently liable for it.

- FSLIC would retire its outstanding stock, held by the Financing Corporation, after the Corporation repays all its debt. (The book value of the FSLIC stock could be as high as $3 billion, if the FHLBanks make their full capital contribution to the Corporation.) The payoff of both the book value and a return on this stock upon retirement would be totally dependent on FSLIC's financial performance (its reserve-to-deposits ratio). After 1996, if FSLIC's reserve-to-deposits ratio reaches certain levels, FSLIC would make contributions to an equity return account. This account, which would be held by FSLIC until the Financing Corporation paid off all its debt, would be the sole source of funds for paying off the FSLIC stock. The non-redeemable capital certificates issued by FSLIC would be extinguished without any repayment.

- The Corporation must sunset by 2026 (or earlier if it has repaid all its debt); its ability to borrow net new funds would end in 1996.
- The attached diagrams illustrate how the proposal would operate.

Flexibility of the Proposal

This proposal incorporates some flexibility in the event the industry problem is larger than estimated and FSLIC needs more funds. Alternatively, the structure could employ less funds from the FHLBanks and the industry if the problem proves less costly.

First, the Financing Corporation could borrow more than $10 billion (by approximately another $5 billion), while continuing to ensure that all the debt principal will be repaid by the maturing zero-coupon instruments it purchases. This expansion could be achieved by employing the Financing Corporation's full $3 billion capital base (as opposed to just $2 billion, as in the basic plan), to buy zero-coupon instruments that will pay off the debt principal.

Second, in the event interest rates rise, the face value of the zero-coupon instruments (the value at maturity) that can be purchased by the Financing Corporation will increase. More face value can be acquired because a zero-coupon instrument in effect pays off all interest, at a compounded rate, together with the amount originally invested, when the instrument matures; so a higher interest rate compounded over time will produce a higher face value amount of a zero-coupon instrument for a given initial investment. This increased amount at maturity would enable the Financing Corporation to use its initial capital to back a larger amount of borrowings. Similarly, the Financing Corporation could generate a larger payoff from the zero-coupon instruments it purchases by selecting ones with longer maturities (more years to compound the interest).

Third, if absolutely necessary, FSLIC could maintain a portion of the special assessment. While FSLIC should preserve this additional assessment authority, its use beyond the 5-year phaseout should be avoided if at all possible.

Budgetary Treatment

This proposal is structured carefully to create fair and appropriate budgetary receipts that will offset FSLIC's case resolution costs; these costs are scored as budgetary outlays.

Assessments always have been counted as budgetary receipts. The equity investment in FSLIC also should be counted as a budget receipt for four primary reasons.

First, FSLIC would never repay, under any circumstances, the bulk of the funds invested in it by the Financing Corporation. These non-redeemable capital certificates will represent between $8 to $12 billion of the funds invested in FSLIC.*/

Second, FSLIC's responsibility to pay off the non-voting capital stock owned by the Financial Corporation is completely dependent on FSLIC's financial condition (its reserve-to-deposits ratio). The size of this stock is exactly equal to the amount of capital the FHLBanks have contributed to the Financing Corporation (a maximum of $3 billion). There is no assurance that the Financing Corporation, and hence the FHLBanks, will get this equity investment back.

Third, like other forms of equity, the possible return on this capital stock investment in FSLIC is dependent on higher levels of FSLIC's financial performance. Even then, the FHLBB must approve this return on investment.

Fourth, while this transaction does involve a borrowing (borrowings are not budget receipts), the Financing Corporation, not FSLIC, does the borrowing. The Financing Corporation, not FSLIC, would be responsible for paying off the principal on this debt. Indeed, the proposed legislation will state that the Financing Corporation's debt is not an obligation of the U.S. Government or FSLIC. The payment of principal on the Financing Corporation's debt is assured by its purchase of the zero-coupon instruments. (FSLIC will pay dividends, which will count as budget outlays when they occur, on the equity invested in it, and these dividend payments will be used by the Financing Corporation to pay the interest on its debt. It is in the nature of equity, which may or may not be paid off, to pay dividends.)

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*/ There is an analogy between these certificates and the recent one percent deposit that capitalized the National Credit Union Fund, which is counted as a budget receipt. Neither will ever be repaid. Both pay a rate of return. (Indeed, the non-redeemable certificates in this plan will stop paying a return when the Financing Corporation repays its debt.) The dividends that provide the return will be scored as outlays when paid out.

Benefits

To summarize the benefits of this FSLIC recapitalization proposal:

- FSLIC will be able to employ about $25 billion over 5 years to resolve its case load of problem thrifts. These funds should be transferred to FSLIC about as quickly as we can reasonably expect the FSLIC organization to handle its problem cases effectively.
- By handling insolvent S&Ls more expeditiously, FSLIC can halt the expansion of the problem.
- The certain availability of about $25 billion for FSLIC should increase depositor confidence. This confidence, plus the sale, merger, or liquidation of the weakest S&Ls, should help the industry lower its cost of funds.
- The FSLIC recapitalization burden will be shared fairly between the S&Ls and the FHLBanks. Moreover, the contributions are structured to minimize the adverse effects on both. There is a high probability that the special assessment on the S&L industry can be phased out over 5 years.
- Regular FHLBank debt should be protected from possibly higher borrower spreads.
- The legislation requiring the FHLBanks' investment in the Financing Corporation would resolve the FHLBanks' concerns about fulfilling fiduciary duties.
- The equity nature of the FHLBanks' capital contribution to the Financing Corporation -- which links the repayment of the stock and the possibilities of higher returns to FSLIC's financial performance -- should ease the FHLBanks' accounting treatment. Moreover, it gives the FHLBanks (whose Presidents are the FHLBB's principal supervisory agents for each district) an additional future economic interest in the condition of FSLIC and the industry.
- The formula that governs the FHLBanks' capital contribution will accommodate FHLBanks with a large percentage of FDIC-insured members.

- Finally, the flexibility built into the proposal permits the FHLBB to raise a range of funds for FSLIC, depending on FSLIC's needs.

H.R. 4701 -- The Financial Institutions Emergency Acquisitions Amendments of 1986

Mr. Chairman, I understood that these hearings also are intended to address H.R. 4701, the Financial Institutions Emergency Acquisitions Amendments of 1986.

The Administration strongly supports H.R. 4701. The emergency acquisition provisions you authored in 1982 have proven most beneficial -- by reducing costs for the insurance funds, helping to maintain financial services to communities, and assisting to secure the stability of the financial system. We believe that H.R. 4701 furthers these ends even more.

My prior statement before this Subcommittee emphasized some of the benefits we believe would be served by a liberalization of the emergency acquisition provisions of the Garn-St Germain Act. The banking regulators are in a better position than I to explain how the particular features of H.R. 4701 are designed to suit their emergency needs. I know that Comptroller of the Currency Clarke will address this subject in detail today, including some minor technical suggestions.

I would, however, be pleased to assist the Subcommittee in any way you consider constructive to secure the enactment of H.R. 4701.

Conclusion

I expect that the Administration will offer you the FSLIC Recapitalization bill language within days. It is in the final stages of our clearance process. After you receive this proposed legislation, I would, of course, be pleased to address any questions in any manner that would be most beneficial to you.

I know we share a deep interest in strengthening FSLIC as promptly as possible. The need is clear, the time is auspicious. The sooner this proposal becomes law, the sooner FSLIC can move its case resolution effort into high gear -- and the sooner depositors will know that their government, the Congress and the Executive branch, can act together to protect the safety and soundness of the financial system.

I would be pleased to try to answer any questions you might have.

Attachments

Illustration of the FSLIC Recapitalization Proposal

1) Impact on the Government

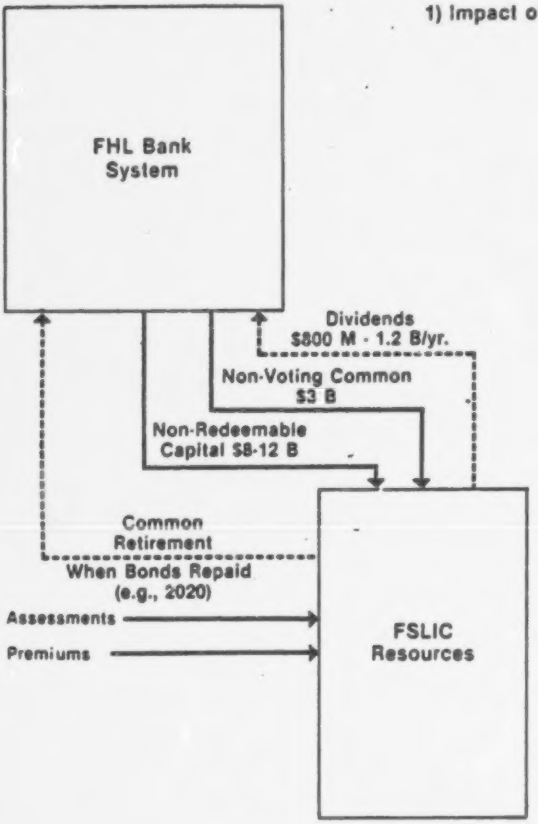
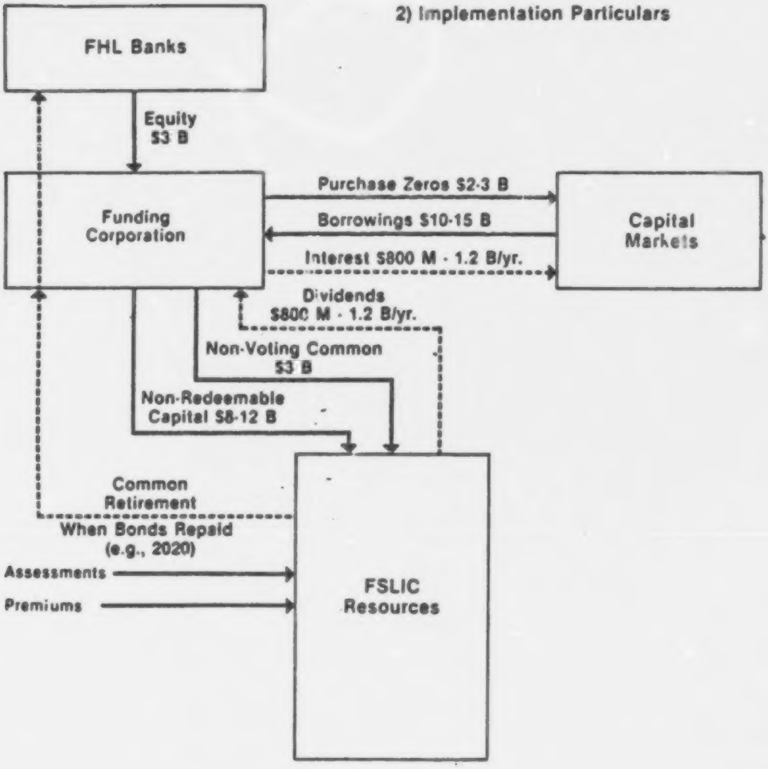

FHL Bank System
Dividends $800 M - 1.2 B/yr.
Non-Voting Common $3 B
Non-Redeemable Capital $8-12 B
Common Retirement When Bonds Repaid (e.g., 2020)
Assessments
Premiums
FSLIC Resources

Illustration of the FSLIC Recapitalization Proposal

2) Implementation Particulars


FHL Banks
Equity
$3 B
Funding Corporation
Purchase Zeros $2-3 B
Borrowings $10-15 B
Interest $800 M - 1.2 B/yr.
Capital Markets
Dividends
$800 M - 1.2 B/yr.
Non-Voting Common
$3 B
Non-Redeemable
Capital $8-12 B
Common
Retirement
When Bonds Repaid
(e.g., 2020)
Assessments
Premiums
FSLIC
Resources

STATEMENT ON

H.R. 4701, LEGISLATION TO STRENGTHEN THE EMERGENCY INTERSTATE ACQUISITION PROVISIONS OF TITLE II OF THE GARN-ST GERMAIN ACT

PRESENTED TO

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS SUPERVISION,
REGULATION & INSURANCE
COMMITTEE ON BANKING, FINANCE & URBAN AFFAIRS
HOUSE OF REPRESENTATIVES

BY

L. WILLIAM SEIDMAN
CHAIRMAN
FEDERAL DEPOSIT INSURANCE CORPORATION

Room 2128, Rayburn House Office Building
May 8, 1986
10:00 a.m.

I. INTRODUCTION

Mr. Chairman, I want to start by expressing my appreciation to you for initiating prompt hearings on H.R. 4701, a proposal to broaden the emergency interstate acquisition provisions of Title II of the Garn-St Germain Act. We at the FDIC, in conjunction with the other federal bank regulators, seek to anticipate potential bank problems. Our goal is to resolve these problems with minimal disruption to our financial system and at minimal cost to our insurance fund. You know from experience that we are not infallible, but I trust you will agree that we are right to try.

I will center my testimony today on the economic conditions underlying the need for expanded emergency interstate bank acquisition authority. First, however, I would like to share with you some of our recent insights on the handling of bank failures. I believe this experience bears directly on the legislation you are considering.

II. HANDLING OF BANK FAILURES

Coping with bank failures has proved a formidable administrative challenge in recent years. The FDIC handled 120 bank failures and assistance transactions in 1985. We expect a similar volume in 1986, possibly including some institutions that are larger than those which failed last year.

We are attempting to handle these failures through purchase and assumption transactions whenever we are authorized to do so by law. P&A transactions are desirable for three distinct reasons. First, P&As are less disruptive than payoffs to the affected communities. A P&A minimizes customer disruption by keeping the failing bank's doors open -- albeit under a new name. Moreover, under a P&A, all deposits and most other liabilities to general creditors 1/ are assumed by the acquiring bank. Thus, all depositors and most general creditors come out whole. In contrast, when a bank is liquidated through a payoff, uninsured depositors and other general creditors usually do not receive the full amount of their claims. 2/ Second, reliance on P&As in lieu of payoffs helps dispel the perception that we handle small bank failures differently than large bank failures. Third, experience shows that P&As are less costly than payoffs to the Insurance Fund.

1/ The exception to this statement involves general creditor obligations, where they exist, in state-chartered banks located in states that have depositor preference statutes.

2/ In early 1984 the FDIC utilized "modified payoffs," under which insured depositors' accounts -- but not the liabilities of uninsured depositors and other general creditors -- are transferred to an acquiring bank. These transactions proved less disruptive than straight payoffs, while retaining some market discipline from bank creditors. Modified payoffs have been used infrequently in the past two years, usually in situations where a P&A was not feasible. See L. W. Seidman, Statement on Deposit Insurance Reform 6-7, Senate Comm. on Banking, Housing, and Urban Affairs, 99th Cong., 2d Sess. (Mar. 13, 1986).

III. EMERGENCY INTERSTATE TAKEOVER LEGISLATION

Now let me return to the legislation currently before you. H.R. 4701 pertains to bank acquisitions involving FDIC assistance, as well as transactions not involving such aid. I will confine my remarks to assisted transactions. Before discussing specific provisions, I will review the changes in the banking environment that have created a need for the statutory modifications we seek.

Most of the failing banks we have seen in the past two years have been small. We have been able to deal with most of them effectively through intrastate acquisitions. In some cases, however, we have been unable to arrange P&As, due to a lack of interested within-state bidders.

The potential problems we face today are greater. Oil and gas banks are threatened by a continuation of today's oil prices. Assets of all the 62 farm banks that failed in 1985 would not equal the assets of the lead bank in some of those companies. In a recent survey, we identified 563 commercial banks as "energy" banks. Eighteen percent of them -- 103 institutions -- are on the problem bank list. At the April 1985 shared national credit review, 17.5 percent of oil and gas credits were criticized. The volume of problem loans is expected to expand dramatically in the next review, now under way.

While we prefer to rely on intrastate solutions, many of the failing bank situations we see today simply may not be resolvable through intrastate P&As. In some states, it may not be possible to find a buyer that is strong enough financially to make an acquisition of a failed or failing bank of moderate size. As recently as a year or two ago we had a sellers' market. In some areas of the country, we find we have to make deals increasingly attractive, even with very small banks. Furthermore, even healthy within-state institutions may not have an incentive to bid for troubled banks.

As we confront situations where few or no within-state buyers are to be found, it becomes important to expand the number of potential bidders. This can be done by allowing out-of-state institutions to make bids. Opening up P&As to out-of-state bidders greatly increases the pool of potential purchasers. It thereby heightens competition and maximizes a bank's sales price. This reduces costs to the FDIC and thus to other banks around the country. The new combined institutions tend to be more diversified and healthier than the unions that result from more limited auctions. As a result, both the stability of the banking system and economic efficiency are enhanced.

We prefer to rely on within-state solutions to troubled bank situations whenever feasible. We fully respect the deference to state authority over banking embodied in the Douglas Amendment and the McFadden Act. But if interstate banking is necessary, it should be accomplished directly. Our aim is to be given adequate tools to cope effectively with the failing bank situations we may confront.

The current interstate acquisition provisions have some very helpful features. They provide for out-of-state purchases of failed commercial banks and failed or failing mutual savings banks with assets of $500 million or more. These provisions have materially increased the FDIC's options and reduced its costs in handling several bank failures. In February of this year, for example, they were used in the failure of Park Bank in Florida, and at least $37 million was saved by the FDIC as a result of this transaction alone.

But these provisions have significant limitations. Eligible commercial banks may be acquired only if they are closed. In contrast, an eligible mutual savings bank may be acquired prior to closing. Absent specific state legislation, existing law does not provide for acquisition of holding company affiliates of a failed or failing bank. In addition, if a bank is acquired by an out-of-state bank holding company, the bank may expand throughout the state by branching if permitted, but not by holding company acquisitions. This means in unit banking states, the out-of-state bank holding company's entry is limited to the site of the bank it acquires.

As a result, we believe that existing law needs not only to be extended but also to be broadened and improved. Our purpose is to provide the FDIC greater flexibility in order to reduce the cost to the Federal Deposit Insurance Fund and therefore to member banks, minimize disruption of financial services to the communities involved, and maintain the safety and soundness of the banking system as a whole.

Briefly, our proposal would do four things. First, it would lower the size threshold of a bank eligible for acquisition. Second, it would permit the acquisition of failing as well as failed commercial banks. Third, it would extend the scope of interstate acquisition authority to include bank holding company systems when the failing bank exceeds the statutory size threshold and represents a sizeable part of the holding company system. Fourth, it would authorize acquiring banks to expand to the three largest metropolitan statistical areas in the state of acquisition. Our proposal also reflects our sensitivity to federalism concerns and to the continued importance of the dual banking system.

Lowering the Size Threshold

Now for some specifics. The existing interstate provision works this way. When a bank of $500 million or more in total assets is closed, the FDIC, as receiver, may arrange the sale of assets and assumption of liabilities of the closed bank by an out-of-state bank or holding company. The $500 million threshold is too high a hurdle, as most troubled banks are considerably smaller. We propose a reduction to at least $250 million.

As of the end of 1985, 953 insured commercial banks had assets greater than $250 million, of which 78 were on our problem list. Of this total, 443 banks had between $250 million and $500 million in assets. Thus, our proposal would almost double the number of institutions eligible for emergency acquisition transactions. An attachment to this testimony provides a detailed state-by-state breakdown of banks falling into the "$250-500 million" and "over $500 million" asset categories.

Others have suggested that the threshold should be lowered further or eliminated altogether for a temporary period for farm banks. Should the Congress decide to do this, the FDIC would have no objection. We would note however, that a small farm bank in a unit banking state would probably not attract many out-of-state bids. On the other hand, in unit banking states that permit multibank holding companies, interstate buyers might be attracted to purchasing the holding company. Permitting this at a threshold lower than $250 million might help resolve some problems in the agricultural sector.

Failing Bank Assistance

Second, arranging an assistance transaction for a failing bank before failure can be cost effective. Franchise value would be less eroded by the flight of bank customers and tax benefits may be retained. This would increase the bank's sales price, thereby decreasing the FDIC's costs and increasing our flexibility to pass assets. In addition, this could avoid the process of decline into insolvency that might create a ripple effect in the financial community. Thus, an out-of-state acquisition should be permitted not only for failed banks, but also for banks in danger of closing, i.e., banks that are expected to close if assistance is not provided.

Holding Company Acquisitions

Third, if the failing bank or banks exceed the statutory size threshold and represent a sizeable part of the bank holding company system, an out-of-state holding company should have the ability to buy the stock of the failing bank and to buy stock of any of the bank's affiliates. The existing law does not provide for the situation where a failing bank is an integral part of a larger banking organization. Because healthy holding company affiliates cannot be acquired, potential acquirers may be willing to pay far less than otherwise for a troubled bank. This diminution in a bank's sales value may raise the FDIC's costs. It may also result in the dismemberment of existing established systems, with disruptive effects in the local community.

Post-Acquisition Expansion

Fourth, acquiring institutions would automatically be entitled to expand into the three largest metropolitan areas in the acquired bank's state, under the same conditions applied to bank holding companies already located in that state. This would enhance institutions' incentives to bid on troubled banks and thereby increase the total number of troubled bank P&As that can be carried out -- to the benefit of depositors, creditors, and affected communities. At the same time, the limitations on the scope of expansion would allow states to retain substantial control over bank expansion within their borders.

Safeguards

The proposal reflects our continued sensitivity to federalism concerns and the importance of the dual banking system. When the existing interstate legislation was enacted in 1982, Congress provided specific safeguards to protect the states' interests. Our proposal retains these safeguards. It does this: (1) by providing state bank supervisors notice and an opportunity to object to proposed out-of-state assistance transactions; (2) by authorizing state bank authorities to determine whether a state-chartered institution is "failing", for purposes of out-of-state bids; and (3) by providing for rebidding procedures under certain circumstances. These safeguards provide an important role for state banking supervisors.

IV. CONCLUSION

Mr. Chairman, that concludes my prepared remarks. I would be pleased to answer any questions you may have.

Attachment

ATTACHMENT

All Insured Commercial Banks with Assets greater than $250 Million
As of December 31, 1985
($ Amounts in Millions)

STATE	Number of Banks w/ Assets of $250 - $500	Assets of Banks w/ Assets of $250 - $500	Number of Banks w/ Assets Over $500	Assets of Banks w/ Assets Over $500
ALABAMA	7	$2,134	5	$14,013
ALASKA	4	$1,477	3	$2,605
ARIZONA	9	$0	6	$22,850
ARKANSAS	8	$2,793	2	$1,864
CALIFORNIA	22	$8,167	29	$259,559
COLORADO	6	$1,969	4	$8,103
CONNECTICUT	4	$1,156	6	$21,385
DELAWARE	4	$1,583	6	$7,171
DISTRICT OF COLUMBIA	3	$1,089	5	$13,315
FLORIDA	27	$9,255	29	$52,277
GEORGIA	7	$2,369	9	$29,370
HAWAII	1	$360	4	$8,405
IDAHO	2	$718	3	$5,471
ILLINOIS	34	$11,409	17	$90,551
INDIANA	20	$6,308	13	$18,152
IOWA	4	$1,370	4	$3,808
KANSAS	8	$2,676	2	$2,229
KENTUCKY	6	$1,825	5	$10,824
LOUISIANA	13	$4,733	14	$15,678
MAINE	1	$387	5	$3,691
MARYLAND	2	$661	11	$26,749
MASSACHUSETTS	21	$7,775	17	$50,559
MICHIGAN	26	$8,910	17	$41,644
MINNESOTA	18	$3,191	6	$23,758
MISSISSIPPI	5	$1,652	5	$7,555
MISSOURI	18	$3,302	11	$19,929
MONTANA	3	$938	0	$0
NEBRASKA	1	$487	4	$4,573
NEVADA	1	$461	4	$6,416
NEW HAMPSHIRE	6	$2,103	1	$667
NEW JERSEY	14	$4,418	29	$47,119
NEW MEXICO	3	$951	2	$2,585
NEW YORK	15	$5,624	46	$602,987
NORTH CAROLINA	2	$534	10	$45,322
NORTH DAKOTA	1	$275	0	$0
OHIO	16	$5,463	28	$57,163
OKLAHOMA	8	$2,512	5	$8,341
OREGON	2	$577	4	$14,842
PENNSYLVANIA	18	$6,245	41	$108,635
RHODE ISLAND	1	$396	2	$8,216
SOUTH CAROLINA	1	$312	5	$11,035
SOUTH DAKOTA	1	$252	4	$11,898
TENNESSEE	7	$2,469	11	$19,224
TEXAS	52	$18,580	41	$97,572
UTAH	2	$526	5	$7,947
VERMONT	4	$1,809	1	$850
VIRGINIA	7	$2,308	10	$33,794
WASHINGTON	2	$791	7	$26,937
WEST VIRGINIA	6	$1,999	1	$535
WISCONSIN	9	$2,697	7	$10,265
WYOMING	2	$558	0	$0
PUERTO RICO	4	$1,527	4	$8,754
	4[illegible]	$152 0[illegible]1	510	$1 896 332

For Release Upon Delivery
May 8, 1986, 10:00 a.m.

STATEMENT OF ROBERT L. CLARKE
COMPTROLLER OF THE CURRENCY
Before the
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS SUPERVISION,
REGULATION, AND INSURANCE
of the
COMMITTEE ON BANKING, FINANCE, AND URBAN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
May 8, 1986

Mr. Chairman and members of the Subcommittee, I welcome this opportunity to present my views on H.R. 4701, a bill that would amend the emergency acquisition provisions of the 1982 Garn-St Germain Act.

Today I would like to discuss the need for additional flexibility to enable bank supervisors to deal more effectively with weakened banks. The bill, which is the subject of these hearings, is designed to provide that flexibility.

NEED FOR ADDITIONAL FLEXIBILITY

It is no secret that a number of banks are experiencing financial difficulty. I recently testified before this Subcommittee on the problems facing national banks that have exposures to weakened sectors of the economy. Currently, there are nearly 300 national banks on our problem list (banks with a CAMEL rating of 4 or 5), an increase of almost 400 percent over year-end 1983. Almost 75 percent of these banks are located in the Midwest and Southwest, areas that have been especially hard hit by downturns in the energy industry, the agricultural industry, or both.

It is an unfortunate fact that the current high rate of bank failures is expected to be with us for some time -- at least under our present system of dealing with bank failures. It is therefore more important than ever before that we deal with each failure in a way that minimizes any disruption in the provision of banking services to the community, the potential for a decline in public confidence in the banking system, and its cost to the Federal Deposit Insurance Corporation (FDIC). The acquisition of a troubled bank by a stronger institution is often the solution that minimizes the adverse effects that can result from the failure of a bank.

It is important to recognize, however, and it is perhaps not a coincidence, that almost two-thirds of the problem banks are in unit banking states or states that otherwise limit branching. Such restrictions limit the number of in-state options for the acquisition of failing banks and reduce the number of bidders for failed banks, making it more difficult for the FDIC to arrange purchase and assumption transactions. If a purchase and assumption cannot be arranged, the FDIC must choose between liquidating a failed bank and paying off its depositors or propping it up with FDIC-provided capital.

Our Office, the Federal Reserve Board, and the Federal Deposit Insurance Corporation believe that expanding the number of potential acquirors of weak banks and removing some of the constraints on out-of-state purchasers of these banks will enhance our ability to resolve weakened bank situations in an expeditious, least-cost manner. The three agencies have collaborated on drafting legislation that would provide us with those tools by amending the emergency acquisition provisions of the 1982 Garn-St Germain Act. The Administration has completed its review of this legislation. Mr. Chairman, I can report to you that the Administration strongly supports H.R. 4701. I will now turn to the primary features of our proposal.

PROVISIONS OF THE BILL

The proposed legislation would amend the emergency acquisition provisions of the 1982 Garn-St Germain Act in four important ways. First, the bill extends the emergency aquisition provisions to authorize out-of-state commercial banks to acquire weakened banks before they fail. The current law requires that a commercial bank be closed before an out-of-state purchaser can be sought. Second, the bill defines banks that have at least $250 million in assets as eligible for emergency acquisitions. Currently, only institutions with at least $500 million in assets are eligible. Third, the bill extends the emergency acquisition provisions to bank holding companies with a subsidiary bank or banks in danger of closing. Fourth, the bill provides limited expansion opportunities for out-of-state holding companies that acquire troubled institutions. The bill also provides for out-of-state acquisitions of failing banks in instances where no FDIC assistance is involved.

Expanding eligibility to failing banks. Authorization of out-of-state acquisitions of weakened institutions before they fail would expand the FDIC's options for dealing with those banks. A bank that is still operating is more likely to attract favorable bids than is a closed bank because the open bank's value as an ongoing business can be preserved. Consequently, we expect that a smaller commitment of FDIC funds would be required to resolve the situation. Moreover, reducing the total number of bank failures would help maintain the stability and confidence in the banking system as a whole.

The bill establishes three criteria, any one of which would be sufficient to declare an institution in danger of closing, and it would be up to a bank's primary supervisor (the state bank supervisor in the case of a state bank; the OCC in the case of a national bank) to determine whether it meets any of the criteria. The first two are that in the absence of Federal assistance, the bank is not likely to be able to meet the demands of its depositors or pay its obligations as they become due (so-called liquidity insolvency), or that the bank has incurred or is likely to incur losses that will deplete substantially all of its capital and cannot be expected to replenish its capital (so-called capital insolvency). The third criterion is the existence or likely existence of any other grounds for closing a bank that are provided for in state law.

Lower size threshold for eligible institutions. Making banks with fewer than $500 million in assets eligible for the emergency acquisition provisions of the Garn-St Germain Act will enhance the FDIC's ability to arrange for the purchase and assumption of mid-sized banks. There are only a limited number of banks in any one state that are large enough to safely purchase another large or mid-sized bank in danger of failing. Because banks play an important role in the economic life of their communities, we believe that it is critical that the FDIC have maximum flexibility in resolving any problems they experience.

Unfortunately, the sectoral problems affecting entire states, and the concentration of troubled banks in those states, increase the likelihood that it will be difficult to find strong in-state institutions willing to rescue weak institutions without substantial financial assistance from the FDIC. Thus, in the absence of alternative solutions, such as out-of-state acquisitions, it is likely that the FDIC will be forced to perform more liquidations and deposit payoffs, with a resulting loss in banking services to local communities. The bill would reduce the minimum threshold to $250 million in assets.

Extension to holding companies. The bill extends the emergency acquisition provisions to holding companies that have a subsidiary bank or banks in danger of closing if such bank or banks have assets of at least $250 million and hold one-third or more of the total assets of the holding company's bank subsidiaries. In addition to allowing the acquisition of these failing banks, the bill permits an out-of-state purchaser to acquire some of the holding company's other bank subsidiaries or the entire holding company. It would not, however, permit FDIC assistance to be provided to nonbank subsidiaries of the holding company.

This addition to the law will facilitate emergency acquisitions in states that prohibit branching but allow multi-bank holding companies. Under current provisions of the Garn-St Germain Act, an out-of-state bank holding company that acquires a troubled institution is not permitted to acquire other banks in that state. Thus, potential acquirors are deterred by the prospect of being limited to a single office location and purchasing what is, quite likely, the most troubled part of the holding company.

Moreover, if the troubled bank is the lead bank of the holding company, stripping it out of the holding company could affect the safety and soundness of the smaller affiliate banks in the holding company. Similarly, breaking up the holding company could have disruptive effects on the local community and the banking system. The proposed change would mitigate these problems by allowing the entire holding company to be acquired.

Additional expansion opportunities. The bill authorizes out-of-state bank holding companies that acquire a troubled institution to acquire, at any future time, additional banks located in the three largest metropolitan areas, consolidated metropolitan statistical areas, or cities in the state in which the acquired troubled bank is located. This amendment reduces, but does not eliminate, some of the competitive disadvantages that out-of-state acquirors face relative to in-state holding companies. Without at least some opportunities for expansion,

out-of-state companies do not have much incentive to bid for a troubled bank in unit banking states.

Unassisted acquisitions. In addition to making these four changes to the 1982 Garn-St Germain Act, the bill introduces another concept: it amends the Douglas Amendment of the Bank Holding Company Act to provide for out-of-state acquisitions of failing banks in instances where no FDIC assistance is involved. This would encourage weakened institutions to find private solutions to their problems before those problems reach a stage that demands federal financial assistance, further reducing potential demands on the FDIC's resources.

The size thresholds for the unassisted out-of-state acquisitions would be the same as for FDIC-assisted acquisitions. Likewise, the provisions dealing with the acquisition of the holding company and its healthy banks, as well as subsequent expansion rights would be similar to the provisions made for assisted acquisitions.

Recognizing the possible concerns of states regarding out-of-state acquisitions, the bill provides the state banking supervisors with a significant role in these transactions. First, the bill, in effect, requires that the target bank or bank holding company exhaust all in-state alternatives before seeking a potential out-of-state acquiror. Second, the state supervisor may effectively veto a proposed out-of-state acquisition by demonstrating that there exists a willing in-state purchaser with sufficient financial and managerial resources to acquire the bank or bank holding company. This will prevent shareholders of a weakened institution from realizing a windfall gain attributable solely to the institution's eligibility for acquisition by an out-of-state purchaser. This approach gives states the opportunity to find their own solutions when banks are in danger of failing. Where no in-state solution is available, it facilitates the use of out-of-state sources of capital.

SPECIFIC CONCERNS

Mr. Chairman, in your letter of invitation you asked some specific questions to which I will now turn.

First, you asked for our estimate of the number of banks that currently qualify under the bill's definition of an institution "in danger of closing" and their location and asset size. As I noted earlier in this statement, our problem bank list contains nearly 300 national banks. I would emphasize, however, that a bank's appearance on the problem list cannot be construed as an indication that it is near a liquidity or capital insolvency. Rather, it indicates the presence of problems that demand close supervisory scrutiny.

Seventy-five percent of the 300 national banks on our problem list are located in the Midwest or Southwest. As you know, the agricultural sector of the economy, principally in the Midwest, involves a large number of smaller banks that have been adversely affected by a decline in the profitability of the agricultural industry. In the Southwest, hard hit by rapid declines in oil and gas prices, there is also a large number of banks, and among them are some very large institutions -- several of which are among the top 25 in the country. Fortunately, most of these larger institutions are well-capitalized and during the past two quarters have established sizeable reserves against the uncertainty surrounding the rapidly fluctuating prices of oil and gas. However, the likelihood of continued economic weakness in these areas leads me to conclude that the number of banks experiencing problems, and the number of bank failures, will remain high over the near term.

Regarding the size of weakened national banks, over 95 percent of the banks on our problem list have fewer than $250 million in assets. I believe that this argues for reducing the threshold even lower than the $250 minimum in the bill, in order to bring the benefits of expanded regulatory flexibility to the vast majority of those banks that would otherwise fail.

Second, you asked whether it is possible for a nonfinancial institution to avail itself of any of the provisions of H.R. 4701 in order to acquire an insured bank. H.R. 4701 does not address acquisitions by nonfinancial institutions. The purpose of this legislation is to remove those geographic restraints, such as the Douglas Amendment, that currently prevent out-of-state banks and bank holding companies from acquiring a depository institution that is in danger of closing.

Third, you asked us to comment on the antitrust implications of eliminating the post-approval waiting period in the event of bank holding company acquisitions. The Department of Justice has reviewed the legislation and supports it, including the changes to Section 11 of the Bank Holding Company Act, with the understanding that the legislation will be modified to provide that the Attorney General must concur in any reduction of post-approval periods to less than five days. In addition, the Department of Justice has suggested a clarifying change that would make it clear that antitrust laws continue to apply to acquisitions under this bill. We would be happy to work with the Committee staff to make those changes.

Finally, you questioned the provision of the bill that would allow institutions receiving FDIC assistance to qualify for out-of-state emergency acquisitions even after they, with FDIC assistance, have improved their condition so that they no longer are in danger of closing. We strongly support this provision. One of the objectives of this legislation is to manage bank failures and problem bank situations in a manner that would best use and conserve the FDIC's insurance fund. The out-of-state acquisition of a failing institution that is already receiving FDIC assistance would reduce costs to the FDIC.

CONCLUSION

Mr. Chairman, some have said that this bill would make an end run around the Douglas Amendment. I can state categorically that that is not the case. Nor is it an effort on our part to effect sweeping changes in the relative roles of federal and state regulatory authorities.

This bill is intended solely as a means of facilitating the resolution of failures and near-failures in the banking industry. We sincerely hope that we will never have to use the powers if they are granted. Indeed, the current emergency acquisition provisions of the Garn-St Germain Act have been invoked only infrequently. It appears to me, however, that we could better manage the problems posed by failing institutions if we had better tools to do that job. As a matter of fact, the mere availability of these tools may provide some stability to the banking system by reassuring depositors that there exists a means for achieving an orderly transition of the ownership of a troubled insitution.

If these tools do have to be used, I believe that they would help minimize the disruption to the community, any loss in public confidence, and the cost to the FDIC insurance fund involved in resolving a weakened bank's problems. I therefore urge the Congress to give H.R. 4701 immediate consideration.

STATEMENT OF
EDWIN J. GRAY
CHAIRMAN, FEDERAL HOME LOAN BANK BOARD
BEFORE THE
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS SUPERVISION, REGULATION AND INSURANCE
OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
MAY 8, 1986

Mr. Chairman and distinguished members of the Subcommittee:

I appreciate the opportunity to discuss the joint Bank Board-Administration plan to recapitalize the FSLIC and the Bank Board's proposed legislative enhancements in the area of supervisory enforcement.

I. INTRODUCTION

On March 12, nearly two months ago, I appeared before this Subcommittee and presented the Bank Board's best assessment of the nature and magnitude of problems facing the FSLIC and the basic outlines of a long-term financing approach to recapitalize the insurance fund in order for it to meet its continuing obligations. I also discussed a variety of other thrift industry-related matters, including the health of the industry, progress being made on the regulatory front and proposals being considered by the Bank Board to further strengthen the safety and soundness of the thrift system.

While the essential information contained in the written statement I submitted at the time has not changed materially since then, I am pleased to report that after-tax earnings for the industry as a whole in the first quarter of 1986 were $1.7 billion, one of the most profitable first quarters on record.

Continuation of low interest rate levels is having a very salutory effect on the profitability of much of the thrift industry and prospects appear to be very good that this performance will continue at least through the remainder of the year, and hopefully beyond.

Since presenting testimony to the Subcommittee at that time the Bank Board has proposed a number of regulations intended to strengthen the agency's hand to more effectively resolve FSLIC cases at the least cost available to us; to bring about greater parity between state and federally-chartered thrifts relative to regional state compacts; to further improve the collection of financial data from insured institutions for supervisory purposes; to gradually raise minimum capital requirements for savings institutions over time; to better assure that the liquidity needs of insured institutions are adequate to meet deposit withdrawals and loan commitments; to facilitate more accurate reporting of financial information to the Board and the public, and to seek to address certain lending problems of concern to the FSLIC.

We have proposed these regulations as a part of our continuing effort to inject greater operating discipline into the business. In addition, our field examination and supervisory staffs in the Federal Home Loan Bank districts continue to increase steadily and at a rapid pace.

As you, the members of this Subcommittee are well aware, our efforts to further strengthen the safety and soundness of the thrift industry do not always meet with resounding popular or critical acclaim by some.

However, in my view, as government officials charged with statutory responsibilities for regulatory oversight of the industry and the thrift system, I believe the initiatives the Bank Board is taking are appropriate and in the public interest. These are responsibilities we continue to take very seriously, duties we seek to exercise as carefully as possible and with prudent discretion in accordance with our understanding of the intent of law.

These last few years have been challenging ones, to say the least, for the savings institutions industry and the thrift regulatory system. I have seen in recent months what appears to be a significant change in the mentality of the industry as a whole, a growing recognition on the part of many in the business that the future of the industry depends on greater strength, greater adherence to practices which serve the goals of safety and soundness and prudence, and the necessary role regulatory oversight must play to help foster, and accomplish, these important objectives.

Mr. Chairman, I mention these indicators of progress because, as we consider the subjects you have placed on today's hearing agenda, we necessarily must, and certainly should, focus on the future of the industry and the statutory system which governs it.

Today, you not only consider the proposal the Bank Board and the Administration place before you to recapitalize the FSLIC, but also ways to enhance and strengthen the Board's supervisory oversight of insured institutions through appropriate -- and more effective -- enforcement tools.

I believe the presentation of these legislative initiatives to accomplish important goals -- objectives which can serve to strengthen the safety and soundness of the industry, itself, and very greatly enhance the strength of the thrift deposit insurance system -- can serve as the impetus for critically needed action to restore the fullest possible public confidence in our FSLIC-insured savings institutions.

As we look to the future of the nation's thrift system, we must, in my view, address soon -- this year -- what I believe is the very real need for enhanced supervisory enforcement tools as well as the absolutely critical need for adequate long-term recapitalization of the FSLIC.

With the commitment this Subcommittee can bring to the legislative process by favorably addressing these requests, along with our continuing commitment at the Bank Board to strengthen both the regulatory oversight of, and the renewed health of, the thrift industry itself, I believe that together, we can achieve very substantial progress, indeed, in our efforts to lay new and strong foundations for the savings institutions system of the future.

II. RECAPITALIZATION OF THE FSLIC

The Bank Board's views on the subject took substantive form in February, 1985, when we decided it was of overriding importance that we exercise our authority, however reluctantly, to impose a special premium assessment of one-eighth of one percent of deposits on FSLIC-insured institutions.

We had been considering this option for a number of months. Losses at insured institutions had been mounting, as a result of the excessive growth in deposits which were fueling investments in poor quality assets. The ratio of FSLIC reserves to deposits had been steadily declining since 1983 to levels which became of increasing concern to the Bank Board.

Imposition of a special assessment was a very serious matter to us because it would have to be piggybacked on top of the regular one-twelfth of one percent of deposits insurance premium collected yearly by the FSLIC.

It was a painful decision for us and for the industry, of course. It was the first attempt at recapitalization, if you will, by this Bank Board. During 1985, the special premium assessment produced an additional $1 billion in income to the FSLIC. While it was a necessary action to try to help shore up the declining reserves of the fund, nevertheless -- as failures mounted in 1985 -- it became clear to me that the special premium assessment would not bring in sufficient income to offset costs associated with the resolution of a growing number of very expensive FSLIC cases.

On September 19, 1985, in a speech before the Annual Convention of the California League of Savings Institutions, I said: "The continuing strains on the FSLIC require a forthright recognition of the need by the leaders of the thrift industry to recapitalize the FSLIC." In that speech, I went on to say that "recapitalization of the FSLIC is what is most necessary to insure that our insurance corporation will always be able to meet its obligations."

On October 17, 1985, I appeared before this Subcommittee and in my combined statement at that hearing I again called for a recapitalization of the fund. I noted during that hearing that I was not proposing a specific recapitalization program, that none of the meager choices available to bring this about were free of difficulties, by any means, and that all of the alternatives I was aware of were, frankly, atrocious. I noted that recapitalization of the fund by the Federal Home Loan Banks was a possibility. However, at that time, we had not yet been able to devise a creative way to utilize the resources of the Federal Home Loan Banks in a manner which was appropriate, and in keeping with what we believed was the need to fully safeguard the capital market-perceived integrity of the borrowing capabilities of these Banks.

In early November, we began experimenting with varying financial approaches to FSLIC recapitalization by somehow creatively utilizing some of the retained earnings stream of the Federal Home Loan Banks to make this possible.

The staff of the Federal Home Loan Bank of Dallas had developed an early approach by late December, 1985. That provided further impetus to additional study and in early January of this year, I appointed a Federal Home Loan Bank System-wide task force to pursue the matter with vigor.

Chaired by Dr. Charles Thiemann, President of the Federal Home Loan Bank of Cincinnati, the task force presented the outlines of a recapitalization plan using both the insurance premium resources of individual savings institutions, themselves, in tandem with appropriate utilization of the retained earnings of the Federal Home Loan Banks.

Meanwhile, the Bank Board had been working with Undersecretary of the Treasury George Gould since November, 1985, on a variety of thrift industry issues, especially those relating to the condition of the FSLIC and possible avenues which could be explored to recapitalize the fund.

I invited Secretary Gould to Cincinnati in late February where he met with the three Bank Board Members and the Presidents of the Federal Home Loan Banks. In that meeting, the Bank System-wide Recapitalization Task Force presented Secretary Gould with the basic approach it had developed. The approach taken by the Task Force was accepted and, since then, has undergone significant further refinement, by the Treasury, the Bank Board and our Bank System Task Force.

A week after the Cincinnati meeting, Secretary Gould testified before the Senate Banking Committee, and in that testimony he pointed to the joint effort we and the Treasury were making along the lines developed by the Task Force.

A week or so later, I laid out in some considerable detail the options which existed within the basic outline of the recapitalization approach, in hearings before this Subcommittee and the Senate Banking Committee.

We continued to work very closely, further refining the program as it made its way through the Cabinet Council process in the Administration. As a result of the outstanding leadership of Secretary Gould and his staff, the Cabinet council on Economic Affairs, chaired by Treasury Secretary James Baker, approved the FSLIC recapitalization plan several weeks ago and President Reagan signed off on it just before he left for his Far East trip.

Before commenting on the plan, itself, let me say that we at the Bank Board made an in-depth study of the problems facing the FSLIC. I referred to this in some detail in my March 12 testimony. In our judgment, based on a great deal of data and the refinement of a variety of assumptions, we estimate that in the next three to five years, the cost of resolution of cases we know about or can reasonably anticipate may well be around $16 billion. This is in assistance the FSLIC would have to provide to resolve such cases. The cost could be more and it could be less. For that reason, we also have built further flexibility into the FSLIC recapitalization plan in order for it to resolve another $6 billion to $9 billion in cases, should they develop over this period.

No one, of course, can know for certain what the ultimate costs of case resolutions will be. Various estimates have ranged from a low of around $5 billion to a high of around $27 billion. We are satisfied that for the purposes of developing the financial needs of the recapitalization plan we describe to you here, we are in the right ballpark with our estimate of around $16 billion. Again, the program has sufficient flexibility to handle up to $9 billion in additional case resolution costs.

In essence, here is how the recapitalization plan would work.

Over the next five years or so, the Federal Home Loan Banks would contribute to a separate corporation -- which would operate under the direction of the Federal Home Loan Bank Board -- as much as $3 billion in retained earnings. The separate corporation would be called the Financing Corporation. This separate Financing Corporation is necessary to insulate the FHLBanks from any possible reduction in their superior capital market standing which direct lending to the FSLIC could entail. The Financing Corporation would serve the purpose of buying capital stock in the FSLIC.

Each of the Federal Home Loan Banks is now required by law to retain 20 percent of its earnings. These retained earnings cannot be paid out in dividends by the FHLBanks to their shareholder member institutions. Under the recapitalization plan, all or a portion of these retained earnings -- as necessary -- would be employed to purchase stock in the Financing Corporation.

The FHLBanks' retained earnings now aggregate to some $1.8 billion. Within five years or so, these retained earnings are expected to grow to around $3 billion. This should occur even under very stagnant growth assumptions for the FHLBanks. Not one penny of the primary capital of these FHLBanks -- that is to say, the stock held in the Banks by member thrift institutions -- will ever be touched. This has been done in the plan to further protect the superior capital market position of the FHLBanks.

The separate Financing Corporation, to which the retained earnings of the FHLBanks would be contributed, would be operated by a three-person directorate, including the Director of Finance of the Office of the Federal Home Loan Banks and two Federal Home Loan Bank Presidents who would be selected for one year terms.

The Financing Corporation would operate in two concurrent modes -- as that of a funding corporation and, in a sense, as a kind of trust. It would have all the same attributes as that of a government agency operating in the capital markets. It would have no guarantees from the Treasury or the FSLIC. Further, it would have no paid staff of its own, but would utilize the existing staff resources of the Federal Home Loan Bank Board and the FHLBank System.

And how would the Financing Corporation utilize these FHLBank retained earnings to bring about FSLIC recapitalization?

First, the Federal Home Loan Banks will buy stock in the Financing Corporation with cash or its equivalent. Under our plan, these funds would then be leveraged for the purpose of borrowing, for example, $10 to $11 billion in the capital markets. We would use a five-to-one leverage ratio in the current market environment. However, that leverage ratio could increase as conditions warranted. The borrowings made by the Financing Corporation would be in the form of long-term bonds. This debt would be raised gradually, as necessary, and only as the FSLIC's needs dictated, over the next five years or so. If, for example, it were necessary, to raise $10 billion over the next five years, $2 billion could be raised per year.

If, as some may be suggesting, the case resolution costs at the FSLIC were less than the $16 billion I estimated over the next five years or so, then the Financing Corporation would utilize fewer FHLBank retained earnings for leveraging borrowings in the capital markets. It is this kind of flexibility which enables our FSLIC recapitalization plan to deal with the insurance fund's case resolution needs on essentially an "as necessary" basis.

In addition, the FSLIC would have a strong financial incentive not to request more funds than it could spend in a given period of time as the costs of any such borrowed -- but unused -- funds would exceed the re-investment rate on its own investment portfolio. Further, I believe Congressional oversight would pay particularly close attention to how effectively and carefully the funds were being used to accomplish case resolution.

The long-term bonds, leveraged and issued by the Financing Corporation, would have maturities of generally from 15 to 30 years. Such long-term maturities are quite different from the natural markets of the FHLBanks, which normally range from one to ten years. The far longer debt maturities of the Financing Corporation are intended to provide the FSLIC a sufficient period of time to meet the FSLIC's case resolution needs over the next five years or so and then return to a very healthy state out into the longer term future.

The long-term debt raised in this fashion would be invested by the Financing Corporation in capital stock of the FSLIC. Two classes of stock would be issued: redeemable non-voting capital stock equal to the potential $3 billion in FHLBank capital invested in the Financing Corporation, and non-redeemable capital certificates of, for example, $7 billion - $8 billion for the residual capital market borrowings.

The new capital stock held by the FSLIC, combined with current reserves, income from FSLIC investments and insurance premium contributions made to the FSLIC over the next five years or so, could bring the total resources of the insurance fund during the period to as much as $25 billion, as I mentioned earlier. Again, if the cost of case resolution to the FSLIC is less than we have projected, then less borrowing will be required of the Financing Corporation, and thus less retained earnings will need to be contributed from the retained earnings of the Federal Home Loan Banks.

The Financing Corporation will be paid stock dividends by the FSLIC to cover ongoing, regular interest payments due the bondholders. These interest payments will be passed on to the bondholders by the Financing Corporation. The FSLIC's continuing ability to generate significant income from insurance premiums over time should assure the investors in the bonds of the regularity of payment of these dividends.

Payment of the principal on the bonds would be insured by the Financing Corporation, not the FSLIC. In this way, no long term balloon payment would be guaranteed by the U.S. Government. To retire the bonds at maturity, the Financing Corporation -- acting in a kind of trust capacity -- would invest the retained earnings contributed by the FHLBanks in top quality securities. The long-term, continuing return on the investment of these funds, over 20 to 30 years, would compound enough interest to assure repayment of the principal on the bonds. Such investments are most easily accomplished by the purchase of zero coupon bonds, but other means are also available.

Thus, the same FHLBanks' retained earnings -- which, when contributed to the Financing Corporation, would serve to leverage borrowings in the capital markets -- would play an offsetting role by defeasing the principal on the bonds. In other words, the returns on the long-term bonds purchased by the Financing Corporation, again employing the retained earnings of the banks to make these long-term investments, would be used to retire the bonds at maturity -- that is to say, pay back the principal to the bondholders when the bonds mature.

So, what do we have thus far in this explanation?

The FHLBanks will contribute retained earnings, and retained earnings only, to the Financing Corporation. The primary capital of Federal Home Loan Banks -- that is to say, the thrift industry's investment in the stock of the Federal Home Loan Banks -- is never, ever touched by this recapitalization, and can't be touched because our enabling legislation will prohibit it, by statute.

The increase in capital stock and certificates purchased by the Financing Corporation in the FSLIC will increase the insurance fund's strength to resolve FSLIC cases in a more timely manner over the next five years. Such stock will be considered a budgetary receipt, not an expenditure. Up to $25 billion in cases could be resolved, but the plan is flexible in that funding is only generated gradually, over time, as needed.

The purchasers of the debt instruments -- that is to say, the bondholders -- will be assured continuing interest payments over time by FSLIC's premium base -- and -- because of the compounding effect of the long-term investments made by the Financing Corporation, again using the contributed retained earnings of the FHLBanks, the returns on these investments will be sufficient to retire the principal of these bonds at maturity.

The other part of the recapitalization equation involves a five-year phase-out of the special premium assessment (the one-eighth of one percent of deposits premium) commencing in the fourth quarter of 1986. We chose this period because, as we ran the numbers, such a five-year period was necessary to make the plan work for a $10 to $11 billion borrowing program. The phase-out we're recommending is a straight-line linear phase-out, but it would not have to take the form of a linear phase-out over the five-year period. Others have suggested it could conceivably be a faster phase-down at the beginning, but with relatively higher premium payments during the last three years, compared to what would be the case with the straight-line phase-out. The straight-line phase-out works this way: 83 percent of the one-eighth special assessment in the first year; 67 percent in the second year; 50 percent in the third year; 33 percent in the fourth year and 17 percent in the fifth year.

Given the very high profitability of most of the industry now, and continuing anticipated levels of good to very good profitability in at least the next year or two, the arguments for accommodating a linear phase-out along the lines I have described seem, in my view, to be especially compelling. In any event, the numbers indicate that we need to raise $4.3 billion from the phase-out of the special assessment to make the plan work.

In my view, the rather compelling reason for choosing the fourth quarter of this year to begin the five-year phase-out of the special assessment is because it is difficult to imagine that we could achieve passage of the enabling legislation to implement the recapitalization plan before the summer. It will also take us a few months to put our debt marketing and necessary operating systems in place.

Remember, the recapitalization plan requires that the FSLIC make ongoing interest payments to the bondholders, through the Financing Corporation, during the entire life of the bonds. Again, a combination of capital stock invested in the FSLIC, returns on FSLIC investments, current FSLIC reserves and a continuing infusion of premium income, in both regular premiums and the funds which are infused by the five-year phase-out of the special assessment, all are necessary to make the program work in the short and long-term.

This is a long-term program. The Financing Corporation, which the recapitalization program establishes, will sunset, by law, in the year 2026 -- forty years from now. Over that period of time, we believe the contribution made by the Federal Home Loan Banks can be repaid by the FSLIC with interest to cover opportunity costs lost by virtue of early contributions made by the Banks to the Financing Corporation. These repayments would be tied to the condition of the FSLIC fund, as measured by the ratio of FSLIC reserves to deposits. All such payments would be made, if appropriate, when the last bonds mature.

For those thrift institutions which are FDIC-insured members of several of our Federal Home Loan Banks, we have established a special allocation formula throughout the FHLBank System to reflect special concerns. The allocation formula, which was jointly devised and agreed to unanimously by our 12 Federal Home Loan Bank Presidents, uses as a base the amount of assets held by FSLIC-insured members of each Federal Home Loan Bank. Generally speaking, each bank will contribute roughly its share of retained earnings to the Financing Corporation, based on the size of its FSLIC-insured members.

Now let me add some final thoughts about FSLIC recapitalization.

First, it seems to me that institutions that are FSLIC-insured -- as well as Federal Home Loan Bank Boards with heavy responsibilities for the health of the FSLIC well out into the future, along with this and future Congresses who exercise ultimate responsibility for the well-being of our overall Federal Deposit Insurance System -- must take into strong account now the need to maintain a continuing liability base in the industry which is sufficient to make this recapitalization achieve its goals over the life of the plan. In other words, it is in everyone's interest -- and indeed the public interest -- to work now to assure that measures which are necessary to maintain the continuing base on which FSLIC premiums are assessed, both in the short and long-term future of the plan, are taken.

In my view, it is imperative that a succession of Bank Boards -- that will be responsible over time for making the overall approaches contained in this plan work successfully -- retain the necessary flexibility contained in certain current statutory provisions to make adjustments as needed.

The enabling legislation required to make the recapitalization approach I have outlined work under varying circumstances over the life of the plan should not be so rigid as to preclude the exercise of necessary discretionary flexibility by the Bank Board to deal with unanticipated circumstances in a manner which is truly responsible, and responsive to the most demanding requirements for maintaining a safe and sound thrift deposit insurance system. I believe that taking care to assure that such discretionary flexibility is retained in the law is very much in the public interest.

I believe you in the Congress have a unique window of opportunity to take swift action on the joint Bank Board-Administration recapitalization proposal during this period of low interest rates. The three members of the Bank Board strongly believe that the recapitalization plan provides sufficient financial and organizational resources to enable the FSLIC to establish more ambitious targets, and resolve more cases in a more expeditious manner. By providing additional resources to the FSLIC to begin a program of more timely, as well as careful and cost-effective case resolutions now, confidence in the FSLIC will be strengthened.

III. THE BANK BOARD'S MAJOR LEGISLATIVE PROPOSALS FOR ENHANCEMENT OF SUPERVISORY ENFORCEMENT

Throughout my tenure at the Bank Board I have stressed my concern for a full return to safety and soundness for the FSLIC and for the industry generally. Accordingly, the Bank Board continues to improve oversight of insured thrift operations, modernizing and strengthening our examination and supervisory resources, injecting discipline to promote prudent operating practices by insured institutions, and making every possible effort, within our available resources, to address the examination, supervisory, and enforcement needs posed by today's thrift industry.

I believe additional legislation is essential to improve and enhance our authority to take swift and effective enforcement action where necessary. In my view, there is a critical need for legislation in at least four areas of enforcement powers.

(A) Definition of unsafe and unsound practice

Although a fundamental aspect of the Bank Board's mission is discovering and correcting unsafe and unsound practices, the Board does not have express authority to define, by regulation, that which constitutes an unsafe and unsound practice, pursuant to the National Housing Act. An unequivocal statement by Congress, affirming the Board's authority in this regard, will greatly enhance our ability to act quickly against poorly run institutions to prevent losses to the FSLIC fund.

(B) Temporary cease-and-desist orders for severe problem cases

Another of the Board's proposed amendments needed to improve our enforcement response to the volatile financial environment in which thrifts now compete would strengthen our authority to issue temporary cease-and-desist orders for severe problem cases. Under present law, a temporary order that is immediately effective may be issued only when an alleged violation or unsound practice is likely to cause insolvency or "substantial dissipation" of assets or earnings, or "seriously weaken" the financial condition of the institution.

Because our statute allows an institution or individual served with such a temporary order to challenge it within ten days in U.S. District Court, the Bank Board cannot simply state that the violation is one that may produce serious losses. Instead, it must stand ready to prove those losses in court at the time it serves the order on the institution. As a result, the Board must spend precious time gathering proof of insolvency or substantial losses even though we know through facts gleaned from our examination process that a serious problem exists at an insured institution.

To correct this situation an amendment is needed to remove the modifiers "substantial" and "serious" from the required findings of dissipation or weakening in such emergency cases. Under this change, a temporary cease -and- desist order could be issued to stop activities detrimental to an institution before the impact on it and the resulting threat to the FSLIC insurance reserve becomes severe. To ensure that orders issued under this new standard are indeed temporary, we will also propose that they only be permitted to remain in effect for 90 days.

(C) Temporary cease-and-desist order because of disarray or lack of books and records

Deficient or non-existent recordkeeping has been a recurrent problem in serious thrift failures over the last two years, and has exacerbated the difficulties encountered in resolving insolvent institutions. The Board has observed that excessively rapid growth and high-risk lending has yielded the unfortunate by-product of poor quality books and records, or no books and records at all. The same developers and speculators who are willing to pay exorbitant fees and commit to high interest rates are those who fail to complete applications, do not produce adequate financial information about themselves or their proposed projects, and are unable to provide acceptable appraisal reports.

When it is clear that an institution is in severe financial straits, the Board must be able to halt any new lending quickly to prevent further losses and insolvency. However, the Board cannot do so under its current authority if the institution's books and records are so inadequate that our examiners cannot determine the true financial condition of the institution. The Board is thus placed in a Catch-22 situation.

Our proposed legislation would extricate the Board from this dilemma by permitting it to halt new business activities immediately when the financial condition of an institution cannot be determined because of disarray or lack of the institution's books and records, despite the efforts of our examiners. We believe this new authority would be an invaluable tool for preventing serious problem cases hidden by inadequate or nonexistent records from becoming disasters during the time needed to identify the problem.

(D) Removal and prohibition powers

Another key area for legislative improvement is the Board's removal and prohibition powers. It is unfortunate, but in many cases true, that it is more difficult to meet the statutory grounds for removing a banker or thrift official from office than to meet the grounds required to convict him of a criminal offense. We think this situation can be rectified with only modest changes to the removal statute in our proposed legislation. The changes include: (1) clarification that a prohibition or removal action may be pursued even after a subject individual has left office (for a period up to two years) to avoid claims that the agency loses jurisdiction when a person resigns before a removal action is complete; (2) removal of any requirement of demonstrated harm to an institution as a result of the wrongdoing in question; and (3) a change that makes the grounds for removal of an official from an institution for misconduct at another institution the same as the grounds for a direct removal from the first institution.

On the question of demonstrated harm, I should note that it will still be necessary to show both wrongdoing and either personal dishonesty or willful or continuing disregard for an institution's safety or soundness as grounds for removing an officer or director. It seems to me absurd to have to wait, as we must under the present statute, until such conduct has resulted in actual harm before removing an officer or director from his position of trust at an insured thrift.

In addition, we need legislation which would continue and broaden the industry-wide ban that presently exists for individuals who have been removed. Currently, a thrift official removed from one FSLIC-insured institution may not serve as a director, officer, or employee of another FSLIC-insured institution, but he or she may work for an FDIC-insured bank or a NCUA-insured credit union without penalty. We propose an expansion of the existing ban not only to prohibit a removed individual from working at another FSLIC-insured institution, but also to prohibit an individual removed by an agency from employment at any type of insured financial institution from serving at any other without prior approval of the appropriate regulatory agency.

IV. CONCLUSION

Enactment of the legislative agenda I have outlined today is crucial for strengthening the national thrift system. Recapitalizing the FSLIC fund is a bold and vital initiative, the centerpiece of the Bank Board's overall strategy to revitalize the financial resources of the FSLIC and assist the thrift industry's continued return to safety, soundness and progress. I look forward to working closely with the members of this Subcommittee and other members of Congress in implementing these goals.

Statement of

Commissioner James L. Sexton

Texas Department of Banking

Before the

Subcommittee on Financial Institutions Supervision,

Regulation and Insurance

Committee on Banking, Finance and Urban Affairs

United States House of Representatives

May 8, 1986

Mr. Chairman, members of the Subcommittee, my name is James L. Sexton. I am the Banking Commissioner of Texas, and it is in that capacity that I have appeared here today. Thank you for the opportunity to testify concerning H.R. 4701.

For as far back as I have knowledge of such things, the FDIC has been pushing to improve its technology for handling the banking industry's casualties. The fact that there has been relatively little notice given to the sharply increased incidence of bank failures in this country says a great deal about the efficiency and imagination of the people at FDIC in devising and implementing methodology that does the job with very minimal disruption.

The specter of difficulties in our larger banks has been with us always, and always the ability to do the job has manifested itself. In the pre-deregulation days of 1973 and 1974, the lure of banking franchises provided a ready solution to the problems of Franklin National Bank and U. S. National Bank, using the simple and straightforward purchase and assumption option provided by statute. A Section 13(c) open bank assistance program at the beginning of this decade brought a happy ending to the funding stress at First Pennsylvania Bank. At Continental Illinois, a great deal of imagination was needed to structure a transaction that many consider ideal.

When the FDIC complained that in-state acquisitors may not always be available to acquire the assets and assume the liabilities of a larger failed bank, the Congress responded with the Garn-St Germain Act of 1982, permitting certain out-of-state acquisitions of failed banks.

Now, certain other constraints present themselves, such as the burgeoning volume of failed bank assets under management of the FDIC. As expressed previously before this Subcommittee, FDIC's capability to administer these assets efficiently is finite. It might be reasonable to assume that the peak level of efficiency has been reached, or perhaps passed, following three consecutive years of unrelenting failures, now occurring at a rate of about two per week. FDIC's administration of assets moreover creates added problems for the borrowers involved. Since FDIC's business is not geared toward building relationships, the ability of these borrowers to continue their businesses depends upon being able to establish new banking relationships at the worst possible time.

Another constraint is time. It is an axiom that FDIC either gets more time to handle its problems or it spends more money and buys more assets. In handling most of its failures, the FDIC works with about 48 hours lead notice to potential bidders. It is able to do this successfully because it passes a clean bank to the successor; ergo, there is no need for a "due diligence" examination by the purchaser.

Yet another constraint is structure. There is no provision of deposit insurance law with which to deal with anything other than banks. What about an insolvent or otherwise failed or failing holding company?

And there is motivation for the regulators to seek to have their concerns addressed. Unexpected shocks in certain elements of our economy have created change, and banks do not tend to absorb rapid change very well. The winds of fortune that so briefly favored the producer of domestic energy now have switched to the user and seriously threaten a permanent impairment of our domestic energy production capacity. These problems, not surprisingly, ultimately are manifested in bad debt reserves in our banks. Nobody really knows the depth of this trough, or that of agriculture, or the ultimate banking consequence of both. But it is easy to understand FDIC's desire to be prepared.

All these obviously are valid concerns. The questions are, in my mind, does H.R. 4701 address those concerns fully, and does H.R. 4701 do unnecessary violence to the structural environment?

The inverse relationship between time and money was handled about as well as it can be handled in the Continental Illinois transaction, wherein subsequent developments properly determined the outcome with respect to the stockholders and the FDIC. Whether the proposed failing bank powers could match those results is certainly worth questioning. Under the proposed bill, a bank would be defined, using necessarily imprecise and imperfect criteria, as being in danger of closing. There would ensue efforts to "shop" the bank inside the state and then, perhaps, outside the state. Each potential suitor presumably would have to perform its own analysis of the target bank, consuming an important amount of time, during which the inexorable erosion of the bank's ability to fund itself, which likely contributed to the "failing" determination in the first place, presumably would continue and perhaps would intensify.

The "failing bank" concept seems useful, properly defined and controlled. Reflecting the elusiveness of understanding as to just what a failing bank looks like, there have been quite a number of definitions discussed. Whereas a failed bank typically is identified by subtracting liabilities from assets and finding a negative number, the failing bank determination could occur only after many decisions are made. Can a capital impairment be corrected through any of the time-proven methods? Is the bank eligible for capital assistance from the FDIC? Does the availability of an interstate bonus, forbidden to nonfailing banks, become a prejudice against the choice of these alternatives by the stockholders? Can we accurately project that the bank involved really will fail through erosion of capital or liquidity, given enough time, or like First Pennsylvania, could it, given a respite from the onslaught of pressures brought on by the current fact situation, as well as by rumor and innuendo, survive and flourish?

In this enlightened period, it is certainly doubtful to me that any solvent bank should fail because of inability to fund itself. If the stockholders continue to have unimpaired funds at risk, the use of the various mechanisms we have devised to protect banking from 1930's-style liquidity crises should be employed. We have long known that any bank that is serving its community cannot simply cash in its chips to whatever extent the creditors demand. We deal in confidence, and, to me, that entails supporting solvent banks having liquidity needs, whether short-term or long-term.

The various regulators, myself included, recently promulgated policies of forbearance. In smaller banks, the regulators pose the only discipline because FDIC, with its massive and ample resources, insures all or practically all the bank's creditors. This sedative is not effective in an institution that has a largely uninsured base of funding. While the FDIC may forbear since it has nothing to lose, the creditors may not feel the same. Forbearance will not be effective for larger financial institutions until and unless there is some tangible evidence of support for the liquidity of those institutions.

H.R. 4701 would permit the sale of an entire holding company if a certain percentage of its assets are in the "failing" category. Here arises the issue of how much of this concept is for the valid purpose of tending to our responsibilities to the banking system and, therefore, to the public, and how much is lubricant to make the transaction cheaper at the expense of Douglas Amendment protection. Undeniably, the protection offered holding company creditors would add some significant measure of comfort for creditors in that class throughout the system, and that perhaps is important. There is a certain attraction, however, to selling only those subsidiaries considered "failing", along, perhaps, with other subsidiaries with capital deficiencies that have arisen in a normal-course, uncontrived fashion. It is certainly possible to leave sound subsidiaries under the ownership of a holding company whether it is solvent or insolvent. Over the years, my Department has endeavored to regulate holding company subsidiary banks as banks, not branches. They have their own capital, their own liquidity, and their own boards of directors. There is no reason a bank so equipped could not prosper without ill-defined support from a holding company. In my estimation, there is an alternative to the full holding company proposal if both the rights of the various states and the financial costs are considered. If only the latter is considered, obviously the alternative does not exist.

As to any who would suggest they are not interested in having only one, or a few locations after having acquired one or more failing banks, I can only question their judging a proposal before it is read.

The competition between intrastate and interstate bidders is at best an uneven match. Unless a bidder within the state is willing to sacrifice itself for whatever purposes the Douglas Amendment intended to accomplish, it rarely can feasibly match the bid of an organization seeking new markets for its particular line of goods. Also, there is the interstate windfall to stockholders that has been mentioned frequently in context with this bill. Both these interests would be served by availing domestic bidders of a modicum of bidding advantage on a bank deemed to be failing. Admittedly, this methodology frequently would involve a small degree of FDIC assistance on an intrastate transaction, whereas a free transaction occasionally would be available interstate.

Finally, I would respectfully offer a few specific ideas for the Subcommittee's consideration:

1. At the threshold, "failing bank" must be tightly defined so it accomplishes only its expressed intentions as it is used in future administrations and under different regulatory leaders.

   My suggestion is that a bank qualify as "failing" when its remaining primary regulatory capital consists only of the loan valuation reserve, as determined by the relevant regulators, according to Generally Accepted Accounting Principles.
2. The Garn-St Germain threshold of $500 million in assets does not work in some states, due to the relatively small size of the average larger institution. To be optimally effective and to provide a proper balancing of interests, each state would practically have to have its own prescribed size criterion.

My suggestion is that the dollar threshold be eliminated and that the essence of the Douglas Amendment be met instead with a positive mandate that the FDIC attempt to meet its cost test with an intrastate bid as a prerequisite for going outside the state. This would serve the stated purpose and would meet all contingencies, including any situation where a state may have no qualified bidders for a bank just below the present or proposed threshold.

3. I would again suggest a "head start" for intrastate bidders in any transaction having potentially interstate scope. The cost to the FDIC would be the same type of cost it incurs in any failure of any size not meeting the current Garn-St Germain threshold.
4. I sincerely hope that this Subcommittee soon will be addressing deposit insurance reform measures, including the FDIC's "bridge bank" concept that seems to have so much constructive application to the problem we are discussing here today.
5. In all instances where an "intrastate" transaction is referred to in the statute, that term should include all states that can legally acquire failed or failing banks in the state of domicile of the failed or failing bank.

Thank you.

COALITION FOR REGIONAL BANKING
AND ECONOMIC DEVELOPMENT

William K. Dabaghi
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May 1, 1986

The Honorable Fernand J. St Germain
Chairman
Committee on Banking, Housing
and Urban Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On behalf of the Coalition for Regional Banking and Economic Development, an organization representing the interests of regional banks across the nation, I would like to thank you for the opportunity to present our position on the federal regulators request for emergency acquisition legislation. At this time, I would also like to commend your leadership in encouraging the development of a thoughtful approach to the problems presently faced by sectors of our nation's financial industry.

The Coalition and its members believe that any federal banking legislation should seek to preserve the rights of individual states to decide upon their financial environment. This approach, as embodied in the Douglas amendment to the Bank Holding Company Act, is serving as an effective tool in leading our nation's financial system towards a stronger and healthier environment. In the last ten months since the U.S. Supreme Court in N.E. Bancorp v. Board of Governors, FRS unanimously upheld the right of individual states to form regional banking compacts, 22 states have enacted such statutes. We are therefore hopeful that any action taken by this Committee will preserve the rights of each state under present banking laws regarding bank expansion across state lines.

The federal regulators have argued that their proposal has arisen in great part because of the problems faced by agricultural and energy lenders. We do not believe, however, that this "crisis" is a threat to the integrity of our nation's financial system. On the contrary, those problems are economic in nature and limited to certain specific sectors of our nation's economy.

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The regulators' proposal is aimed at preserving the health of the Federal Deposit Insurance Corporation's (FDIC) capital. While requesting additional powers, however, the FDIC should use its available resources more effectively. The FDIC was established with the purpose of protecting depositors without the need for Congressional intervention. With the present funds available to the FDIC at an all time high, regulators should not come to Congress to request dramatic changes in our nation's banking laws without first applying additional self-help measures and drawing upon those reserves accumulated over the last few decades.

We are encouraged with the regulators' latest draft proposal limiting the rights of out-of-state acquirers. In no circumstance should an out-of-state acquirer under "emergency" provisions be granted the right to enter an entire multi-state region and override state banking statutes prohibiting such "leapfrogging." Any federal preemption of state statutes could greatly endanger the regional banking movement and negatively affect the future development of regional economies. In addition, no out-of-state acquirer should be granted more liberalized branching and expansion rights than in-state institutions.

The regulators, in their proposal, have requested authority to arrange the acquisition or merger by out-of-state banks or holding companies or holding companies of insured banks with total assets of $250 million or more which are in danger of closing or have already failed. This change will allow approximately one thousand of our financial institutions to become eligible for interstate takeovers. We do not believe this to be a satisfactory solution. Instead, we support a retention of the present $500 million threshold, with an exemption for the four largest banks in those states with fewer than four banks over the threshold. Such an approach would allow for the interstate acquisition of an individual state's four largest banks when no in-state acquirer is available and prevent a de facto interstate banking environment.

The regulators' request to extend their authority for interstate acquisitions to banks "in danger of closing" will require clear Congressional direction. We believe that the regulator's proposed definition of "in danger of closing" is too vague. Congress should make its intention clear that whatever powers are granted to the regulators should only be used in "emergency" situations. We are hopeful that you will therefore include specific standards and guidelines regarding what are minimum levels of capital and excessive losses for determining when a bank is "in danger of closing."

To ensure proper use of such "emergency" power, we recommend that increased authority be granted to the appropriate state bank supervisor of the state in which a troubled bank in danger of closing is chartered. The state banking regulator should be granted the authority to object to the federal regulators' proposal without being overruled by the Board of Directors of the FDIC. Such a safeguard will effectively preserve the rights of individual states to regulate their own financial environment and preserve our nation's dual banking system.

We are hopeful that before any "emergency" powers are invoked by the regulators, individual states with restrictive banking statutes will be given an opportunity to address their problems. Certain states could effectively prevent the use of such "emergency" legislation by amending their statutes regarding in-state expansion of financial institutions and thereby effectively prevent the need for federal regulatory intervention.

It is the Coalition's position, that while we do not oppose the regulators' request for additional authority, we believe that such new authority should be strictly limited to "emergency" cases and for a period no greater than three years. Requiring concurrence by both the FDIC and the individual state banking commissioner will ensure that the situation faced is an undoubtable "emergency." Passage of federal legislation will therefore hopefully not affect the FDIC's historic policy to work with existing management in resolving problems. We encourage the regulators to make increased use of the capital available and existing laws and statutes to successfully address the problems faced by our financial industry.

The regulators wish to strengthen the health of our financial industry. Their solution, however, cannot effectively resolve the present problems without a closure of the "nonbank" bank loophole. The unchecked expansion of unregulated and sometimes undercapitalized business organizations into banking can only continue to undermine the overall safety and soundness of our nation's financial system. In addition, an institution insured by the FDIC should not be a "nonbank" avoiding rules which a bank under the Bank Holding Company Act must follow. The "nonbank" bank loophole has not been of benefit to either the consumer or the viability of the financial industry and should be permanently closed. Continuation of the loophole will only weaken the potential attractiveness of troubled institutions to potential acquirers, whether banks or savings-and-loans.

In summary, the Coalition supports efforts to address the present problems faced by the financial industry, while respecting the rights of individual states under present banking laws to determine their own future. We look forward to working with you and the Committee on these important matters in the months ahead.

Sincerely yours,

Brian

Brian R. Foster
President

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Banking, Finance & Urban Affairs Committee

May 12, 1986

The Honorable Fernand J. St Germain
Chairman, Committee on Banking, Finance
& Urban Affairs
U.S. House of Representatives
2108 Rayburn House Office Building
Washington, D.C. 20515

RE: Hearings before the Subcommittee on Financial Institutions Supervision, Regulation and Insurance of the Committee on Banking, Finance and Urban Affairs, U.S. House of Representatives, on Emergency Interstate Acquisition Authority, FSLIC Recapitalization and Increased FHLBB Supervisory Authority

Dear Mr. Chairman:

The Association of Thrift Holding Companies would like to submit to the Committee a brief statement of its views on H.R. 4701, H.R. 1680, H.R. 2444, and legislation that we understand will soon be proposed relating to the recapitalization of the FSLIC fund. Accordingly, we would very much appreciate your including this letter in the record of the hearings you have been conducting on these proposals.

In sum, while we support H.R. 4701 and the Bank Board's proposed FSLIC recapitalization, we would strongly oppose enactment of H.R. 1680 and H.R. 2444 prior to a more comprehensive analysis of some of the most significant provisions of those bills. With regard to H.R. 4701, we agree with the testimony that an emergency appears to exist in the banking industries of several states and that the proposed legislation is well-designed to respond to the problems presented. We also regard as an emergency the current level of capitalization of the FSLIC insurance fund. On the basis of current information and understanding, we support the Bank Board's plan to recapitalize the fund and the introduction of legislative proposals necessary to carry out that plan.

Several provisions, however, of the Bank Board's other proposed legislation, H.R. 1680 and H.R. 2444, give us great concern. These provisions attempt to provide a legislative response to some of the most basic questions currently under consideration regarding the thrift industry and -- of particular interest to us -- the thrift holding company system. We strongly believe that those provisions would profit from the completion of analyses that are now under way within the Administration and the Congress. We therefore urge that these bills -- which are not designed to deal with exigent conditions -- be put aside, studied further, and considered separately from the emergency measure we support.

Two examples of the provisions that concern us may help to explain our position. First, H.R. 2444 contains a proposal that would severely restrict the ability of thrift institutions to utilize recently expanded state-authorized investment powers. The Treasury Department, on the other hand, has indicated that it is considering a very different approach to this matter that relies heavily on the thrift holding company structure. Instead of prohibiting state-authorized activities, the Department has suggested that these activities be conducted only through a thrift holding company or its non-thrift subsidiaries. The Department is seriously studying this suggestion and hopes to arrive at specific proposals before long. The Association believes that, with some modifications, the Department's approach can provide a sound resolution of these matters. We would thus view as extremely unfortunate any action by the Congress that would preempt the Department in this area.

Second, H.R. 1680 proposes that a new "thriftness test" be incorporated into the thrift regulatory laws. The thriftness test of current law is of major interest to the Association, since it goes to the heart of the thrift holding company system. Satisfaction of the requirements of that test by thrift subsidiaries is a precondition to the regulatory privileges now accorded unitary thrift holding companies. Congressman Barnard's subcommittee is currently conducting extensive hearings on the thrift and bank holding company statutes and, as a part of those hearings, will be closely examining the status of unitary thrift holding companies. While some have suggested restricting the privileges of unitary holding companies, others -- notably the Chairman of the Bank Board -- have suggested extending unitary privileges to multiple thrift holding companies. Again, we would not want to see such an important debate preempted by premature or piecemeal action. We would thus find objectionable the enactment of major alterations in the test that now controls unitary privileges.

We should add that our views here relate not only to the bills before the committee, but also to similar thrift provisions in H.R. 20 as reported by the committee last year. In the case of all of these proposals, we think that the committee should have the benefit of the comprehensive and highly relevant examinations that are now under way. Absent emergency conditions, it would not be consistent with sound public policy for the Congress to act prior to the completion of those analyses.

Respectfully,

CEBentley/klb

C.E. Bentley
Chairman

CEB/klb